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WHEN: January 28, 1997 at 9:00 am

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Reader Aids
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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 62, No. 4
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DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 210 and 226

RIN 0584–AC42

Child and Adult Care Food Program; Improved Targeting of Day Care Home Reimbursements

AGENCY: Food and Consumer Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Child and Adult Care Food Program regulations governing reimbursement for meals served in family or group day care homes by incorporating provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Specifically, this rule establishes a two-tiered reimbursement rate structure for day care homes. Under this structure, the level of reimbursement for meals served to enrolled children will be determined by economic need based on: the location of the day care home; the income of the day care provider; or the income of individual children's households. In addition, this rule makes a minor amendment to the National School Lunch Program regulations to facilitate the provision of elementary school data on free and reduced price eligibility determinations to sponsors of family day care homes. These revisions are intended to target higher CACFP reimbursements to low-income providers and children.

DATES: Effective July 1, 1997, except for sections 210.9(b)(20), 210.19(f), 226.6(f)(2) and 226.6(f)(9), which are effective March 10, 1997. To be assured of consideration, comments must be postmarked on or before April 7, 1997, except for comments on the information collection which must be received by March 10, 1997.

ADDRESSES: Comments should be addressed to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302. Comments in response to this rule may be inspected at the above address during normal business hours, 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie or Edward Morawetz at the above address or by telephone at 703–305–2620.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule has been determined to be economically significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). This rule is expected to have a significant impact on a substantial number of small entities. Specifically, it will impact day care homes classified as tier II day care homes. Additional discussion of this impact is contained in the Economic Impact Analysis following this rule.

Executive Order 12372

The Child and Adult Care Food Program (CACFP) and the National School Lunch Program (NSLP) are listed in the Catalog of Federal Domestic Assistance under No. 10.559 and 10.555, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Paperwork Reduction Act

Summary: In accordance with the Paperwork Reduction Act of 1995, this Notice announces the Food and Consumer Service's (FCS) intention to request Office of Management and Budget (OMB) review of the adjustments to be made to the information collections for the Child and Adult Care Food Program and the National School Lunch Program as a result of the interim rule, Child and Adult Care Food Program: Improved Targeting of Day Care Home Reimbursements.

To be assured of consideration, comments on the information collection must be received by March 10, 1997.

Comments on the information collection should be addressed to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302.

Comments are invited on the following areas: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this Notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

Titles: 7 CFR Part 226, Child and Adult Care Food Program and 7 CFR Part 210, National School Lunch Program.

OMB Numbers: 0584–0055 and 0584–0006.

Type of request: Revision of existing collections.

Abstract: The interim rule, Child and Adult Care Food Program: Improved Targeting of Day Care Home Reimbursements, is intended to implement the provision included in Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, that establishes a two-tiered reimbursement system for day care homes participating in the Child and Adult Care Food Program. Under this structure, the level

of reimbursement for day care homes will be determined by economic need based on: (1) The location of the day care home; (2) the income of the day care home provider; or (3) the household income of each participating child.

In accordance with the Paperwork Reduction Act of 1995, the Department is providing the public with the opportunity to comment on the information requirements of this interim rule as noted below:

Section	Annual No. of respondents	Annual frequency	Annual responses	Per response	Annual burden hours
7 CFR 210.9(b)(20) School food authorities provide State agencies with a listing of elementary schools with at least 50% eligibility					
New	4,969 school food authorities	1	4,969	.50	2,485
7 CFR 210.19(f) State agency collects and maintains a listing of all elementary schools participating in the National School Lunch Program with at least 50% eligibility					
New	54 State agencies	1	54	2	108
7 CFR 210.19(f) State agency provides Child and Adult Care Food Program State agencies with a listing of all elementary schools participating in the National School Lunch Program with at least 50% eligibility					
New	12 State agencies	1	12	.50	6
7 CFR 226.6(f)(9) State agencies administering CACFP provide listing of eligible schools to sponsoring organizations					
New	54 State agencies	23	1,242	1	1,242
7 CFR 226.6(f)(9) State agencies administering CACFP provide census data to sponsoring organizations					
New	54 state agencies	2.3	124	1	124
7 CFR 226.6(f)(10) Sponsoring organizations submit tier I and tier II enrollment information to State agencies					
New	1,240 sponsors	1	1,240	1	1,240
7 CFR 226.15(e)(3) Sponsoring organizations maintain documentation used to classify homes as tier I					
New	1240 sponsors	40	49,600	1	49,600
7 CFR 226.13(b) Sponsoring organizations collect and report meals by category to State agency each month					
New	1,240 sponsors	12	14,880	2	29,760
7 CFR 226.13(d)(1)–(3), 226.18(e) Tier I and Tier II homes submit monthly meal counts to sponsors					
New	193,000 homes	12	2,316,000	1.25	2,895,000
7 CFR 226.13(d)(3)(i)–(iii) Sponsoring organizations establish reimbursement amounts for tier II homes with income-eligible children					
New	496 sponsors	78	38,688	.50	19,344
7 CFR 226.15(e)(3) Sponsoring organizations, upon request, collect free and reduced applications from enrolled children in Tier II that are not providers own at least once a year and maintain eligibility determination of each enrolled child					
New	496 sponsors	39	19,344	.50	9,672
7 CFR 226.23(e)(1) Households of children enrolled in tier II day care homes complete free and reduced price applications					
New	166,752 households	1	166,752	.075	12,506
7 CFR 226.23(h)(6) Sponsoring organizations collect information to conduct verification of homes that qualify as tier I based on provider's income					
New	1,240 sponsors	16	19,840	1	19,840

Total Proposed Burden Hours: 3,040,927.

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This

rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Child and Adult Care Food Program: (1) Institution appeal procedures are set forth in 7 C.F.R. § 226.6(k); and (2) disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by 7 CFR 226.22 and 7 CFR 3015.

This rule implements the amendments set forth under sections 708(e) (1) and (3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193 (the Act), which was enacted on August 22, 1996. The Act made several fundamental changes affecting the reimbursement provided for meals served in family or group day care homes under the Child and Adult Care Food Program. Section 708(k)(3) of Pub. L. 104–193 requires that interim regulations implementing these amendments be issued by January 1, 1997, and that final regulations be issued by July 1, 1997. For this reason, the Administrator of the Food and Consumer Service has determined, in accordance with 5 U.S.C. 553(b)(3)(B), that it is impracticable and contrary to the public interest to take prior public comment and that good cause therefore exists for publishing this rule without prior public notice and comment. Comments are being solicited until April 7, 1997. A longer comment period is not practicable given the Act's requirement that final regulations be issued by July 1, 1997. All comments will be carefully considered prior to final rulemaking.

Background

Under the Child Care Food Program (CCFP), as it was initially established and authorized in November 1975 by section 16 of the National School Lunch Act and Child Nutrition Act of 1966 Amendments of 1975 (Pub. L. 94–105), application requirements, enrollee eligibility determinations, and reimbursement rates were the same for both family and group day care homes and centers. Specifically, individual eligibility determinations based on household size and income statements were required, and the meal reimbursement rates paid to centers and to sponsors on behalf of day care homes were based on each enrolled child's eligibility for free, reduced price, or paid meals. Eligibility for free and reduced price meals was based on income thresholds and procedures essentially the same as those used by the National School Lunch Program (and still in use by the National School Lunch Program). At this time, in both day care centers and day care homes, approximately 70 percent of enrolled children were eligible for free and reduced price meals; the remaining 30 percent were eligible for paid meals.

Over the next several years, concern was raised that licensing, paperwork, and recordkeeeping requirements were creating barriers to day care home participation in the CCFP, and it became clear that there were major differences between the administrative capabilities and operating methods of day care home providers and child care center operators. Specifically, differences in size of facility, relationship with parents, and management sophistication suggested the need for simpler administrative procedures in day care homes. In 1978, these concerns were addressed in the Child Nutrition Amendments of 1978 (Pub. L. 95–627). This law eliminated individual free and reduced price eligibility determinations (i.e., means testing) in day care homes and established a single reimbursement rate for each type of meal served. This rate was slightly less than the rate paid for comparable meals served at the ''free'' rate in child care centers. These changes encouraged day care home provider participation in the Program by reducing their administrative paperwork burden.

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) introduced a requirement to means test households of providers' own children by eliminating reimbursement for providers' own children if the providers' households had incomes greater than 185 percent of the Federal income poverty guidelines. Otherwise, the simplified procedures established by Public Law 95–627 were left intact. With the sole exception of means testing of providers' own children, day care homes have continued to receive reimbursement under the Program for meals served to all enrolled children, without application and regardless of income.

Simpler administrative procedures for family and group day care homes led to significant growth in their program participation. This growth was especially evident among family day care homes serving middle and upper-income children. The Study of the Child Care Food Program (CCFP) conducted for FCS by Abt Associates, Inc., showed that by 1986 approximately 70 percent of children then receiving reimbursement for meals served in family day care homes would have qualified for ''paid'' meals prior to the changes to the law in 1978. (''Paid'' meals are for children from households with incomes over 185 percent of poverty.) These percentages were exactly opposite from the percentages of income-eligible children participating in the program before the means test was eliminated. Led by growth in the family day care portion of the CCFP—renamed the Child and Adult Care Food Program (CACFP) in 1989—Program expenditures increased from $300 million in 1983 to $1.44 billion by 1995.

To illustrate the current difference between reimbursement in day care homes and centers, in 1996, for example, if a child eligible for paid meals and a child eligible for free meals both transferred from a center to a day care home, reimbursement provided for lunches for the paid child would change from $0.32 in the center to $1.54 in the day care home. The change for the child eligible for free meals would change from $1.94 in the center to $1.54 in the home. The rate difference for the ''free'' child is largely due to administrative costs, which are paid separately to sponsoring organizations of day care homes, while center administration is included in the reimbursement rate they receive.

The goal of reducing overall Federal expenditures has prompted a review of many programs and led to a decision to improve the targeting of benefits to low-income children in the CACFP. To accomplish this targeting, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 establishes two ''tiers'' of day care homes and reimbursement rates. Under the law, tier I homes are those that are located in low-income areas or those in which the provider's household income is at or below 185 percent of the Federal income poverty guidelines. All meals served to enrolled children in tier I homes will continue to be reimbursed at essentially the same rates that they currently receive, adjusted for inflation. Tier II homes, in contrast, are those which do not meet the location or provider income criteria for a tier I home. The meals served in tier II homes are reimbursed at lower rates, unless the provider elects to have the sponsor collect free and reduced price applications from the households of children enrolled for day care in the home. In that case, the meals served to identified income-eligible children (i.e., children from households with incomes at or below 185 percent of the Federal income poverty guidelines) are reimbursed at the higher, tier I rates.

These and other related provisions of the law are discussed in greater detail in the preamble that follows.

Tier I Family or Group Day Care Homes

Definition

Section 708(e)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 amended section 17(f)(3)(A) of the National School Lunch Act (NSLA) (42 U.S.C. § 1766(f)(3)(A)) by defining a ''tier I family or group day care home'' as:

[1] a family or group day care home that is located in a geographic area, as defined by the Secretary based on census data, in which at least 50 percent of the children residing in the area are members of households whose incomes meet the income eligibility guidelines for free or reduced price meals under section 9 [of the NSLA]; [2] a family or group day care home that is located in an area served by a school enrolling elementary students in which at least 50 percent of the total number of children enrolled are certified eligible to receive free or reduced price school meals under this Act [the NSLA] or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.); or [3] a family or group day care home that is operated by a provider whose household meets the income eligibility guidelines for free or reduced price meals under section 9 [of the NSLA] and whose income is verified by the sponsoring organization of the home under regulations established by the Secretary.''

Also, providers whose day care homes qualify as tier I day care homes on the basis of the provider's household income may demonstrate that they meet the criteria for free or reduced price meals by virtue of their receipt of food stamp, Food Distribution Program on Indian Reservation, or certain State programs for Temporary Assistance to Needy Families (formerly Aid to Families with Dependent Children) benefits.

This rule amends section 226.2 of the CACFP regulations by adding a definition of ''tier I day care home.''

Provision of Data

Except in cases in which a provider demonstrates its household income meets the free or reduced price eligibility standards, the Act requires that either elementary school eligibility data or census data must be utilized in order for a day care home to qualify as a tier I family or group day care home. Section 708(e)(3) of the Act further amended section 17(f)(3) of the NSLA to set forth requirements pertaining to the provision of this data to family or group day care home sponsoring organizations.

School Data

Section 708(e)(3) of the Act added section 17(f)(3)(E)(ii) to the NSLA to require that each State agency that administers either the National School Lunch or School Breakfast Programs annually provide to approved family or group day care home sponsoring organizations a list of elementary schools in the State in which at least one-half of the enrolled children are certified to receive free or reduced price meals. That provision of the Act further stipulates that, when determining whether a day care home qualifies as a tier I day care home, the CACFP State agency and sponsors shall use the most current data available at the time of the determination. Finally, the Act directs State agencies which administer the school nutrition programs to collect on an annual basis the data necessary to comply with these requirements.

The Department considers that aggregate school data on the percentage of enrolled children eligible for free and reduced price meals is a highly effective way of determining whether or not day care homes are located in low-income areas. To enable sponsors to obtain this information, this interim regulation amends the National School Lunch Program (NSLP) regulations to require school food authorities to provide the State agency administering the NSLP with a list of all elementary schools under their jurisdiction in which 50 percent or more of the enrolled children are determined eligible for free or reduced price meals as of the last operating day in October. Although the law refers to both the State agency which administers the NSLP and the State agency which administers the School Breakfast Program, in fact there are no States in which the NSLP and School Breakfast Program are operated by separate State agencies. Furthermore, in accordance with section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448), we are planning to consolidate the regulations for the NSLP and School Breakfast Program in the near future in order to eliminate duplication and to streamline program requirements. Therefore, the Department has determined that it is unnecessary to amend 7 CFR Part 220, regulations for the School Breakfast Program, to include the provision of data requirements discussed above.

The Department notes that this information is already collected and maintained at the local school food authority level. Section 210.8(c) requires school food authorities to report the total number of enrolled free, reduced price and paid children to the State agency on the October claim for reimbursement. To submit this data, the school food authority consolidates the enrollment data submitted by the individual schools under its jurisdiction. Moreover, school food authorities are required pursuant to section 210.9(a)(8) to analyze monthly meal counts submitted by their schools for accuracy. This is generally done by comparing the free, reduced price and paid meal counts to an attendance factor developed using the October enrollment data. Therefore, this new statutory requirement will not result in an additional information collection burden at the local level.

Likewise, there should be little, if any, increase in reporting burden. While there is no Federal requirement for school food authorities to report the names of participating schools to the State agency, many States do collect this information. The Department also notes that some school food authorities are accustomed to providing individual school data for severe need reimbursement under the School Breakfast Program. In most instances, these will be the same low-income schools as those meeting the criteria for a tier I low-income area determination. For these reasons, the increase in reporting burden should not be large.

The law directs the State agency administering the NSLP to provide this information directly to sponsors that request it. However, the Department is concerned that some sponsors, particularly smaller ones, may not know whom to contact in the State agency administering the NSLP to obtain this information. This would be especially true of sponsors operating in States in which an agency other than the State education agency administers the CACFP.

Therefore, this interim regulation requires the NSLP State agency to provide the CACFP State agency with a list of elementary schools in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals in addition to requiring NSLP State agencies to provide the list to requesting sponsors. This will facilitate sponsors' access to local school data while minimizing confusion. The first list shall be submitted by school food authorities to the NSLP State agency no later than March 1, 1997, from the NSLP State agency to the CACFP State agency no later than March 15, 1997, and by the CACFP State agency to sponsoring organizations by April 1, 1997. In subsequent years, this list must be provided by school food authorities no later than December 31, and from the

NSLP State agency to the CACFP State agency no later than February 1 of each year. This schedule gives school food authorities 60 days after the end of October to report this data to the NSLP agency, and the February 1 deadline will provide that agency with one month in which to compile the list and forward it to the CACFP State agency, which would then make the information available to sponsors by February 15 each year.

Census Data

Section 708(e)(3) of the Act amended section 17(f)(3)(E)(i) of the NSLA to require that the Secretary provide each State agency administering CACFP with appropriate census data showing the areas of the State in which at least 50 percent of the children are from households meeting the income standards for free or reduced price meals. Each CACFP State agency, in turn, must provide the data to day care home sponsoring organizations in the State.

Section 708(e)(3) of the Act further provides that the sponsoring organization's determination that a day care home is located in an eligible low-income area be in effect for three years when such determination is based on school data. When census data are used, the determination remains in effect until such time as more recent census data are available. Regardless of the type of data used, section 708(e)(3) of the Act further amended section 17(f)(3) of the NSLA to give the State agency the discretion to change the determination if it subsequently learns that the area in which a home is located no longer qualifies as an eligible area. Since we believe that in order to ensure program integrity all levels of program administration should have the responsibility to amend tier I determinations based upon the benefit of new information, this interim rule provides FCS and sponsors, as well as State agencies, with this authority. This expanded authority is being granted under the Department's general authority to issue regulations necessary for the administration of the Program.

The Department has experience in the Summer Food Service Program with area eligibility determinations and the data available to document area eligibility. Based on this experience, the Department believes that census data should not be used when relevant, current information on free and reduced price eligibility in local elementary schools is available. Since census data are collected only once every ten years, and release of the data by the Bureau of the Census typically does not occur until several years after the data are collected, school data is far more current and will, in most cases, more accurately represent current economic conditions in a given area. However, we recognize that there may be certain circumstances which warrant the use of census data to establish a day care home's eligibility, even when current-year school data are available. Therefore, when providing the required census data, the Department will provide specific guidance as to the use of such data to all State agencies for making determinations in such situations.

We also recognize that there may be situations in which census data and school data provide conflicting results of an area's eligibility. Our guidance accompanying the census data will outline very specific instances in which using census data, instead of current-year school data, is appropriate. Using this guidance, the Department expects State agencies to exercise their oversight to resolve conflicts between the data sources so as to ensure that decisions on classifying tier I homes are appropriate. Of primary concern to the Department is that sponsoring organizations use the data that is most reflective of the socio-economic status of a given area when classifying homes as tier I or tier II.

Accordingly, this interim rule adds a new paragraph (b)(20) to section 210.9 to require school food authorities to provide their NSLP State agencies, by March 1, 1997, and by December 31 of each year thereafter, with a list of all elementary schools under their jurisdiction in which 50 percent or more of the enrolled children have been determined eligible for free or reduced price meals as of the last operating day of October. Furthermore, a new paragraph (f) is added to section 210.19 requiring the State agency administering the NSLP to provide by March 15, 1997, and by February 1 each year thereafter, to the State agency administering the CACFP, and to sponsoring organizations upon request, a list of all elementary schools participating in the NSLP in which at least 50 percent of enrolled children have been determined eligible for free or reduced price meals as of the last operating day of October. In addition, this rule amends section 226.6(f) by adding a new paragraph (9) to require that the CACFP State agency provide all approved day care home sponsoring organizations in the State the school and census data as described above. For school data, this would require coordination with the NSLP State agency. New section 226.6(f)(9) also requires that, when using school or census data, the most recent available data be used in making the determination of a home's eligibility as a tier I day care home; that determinations of a home's eligibility as a tier I home will be valid for one year if based on a provider's household income, three years if based on school data, or until more current data are available if based on census data; and that a sponsor, a State agency, or FCS may change the determination if information becomes available indicating that a home is no longer in a qualified area.

Making Tier I Day Care Home Determinations

Section 708(e)(3) of the Act amended section 17(f)(3)(E) of the NSLA to require that school and census data ultimately be provided to sponsoring organizations. Sponsoring organizations, consequently, will be responsible for determining which day care homes are eligible as tier I day care homes. As discussed above, this will be accomplished applying the school or census data provided by the CACFP State agency, or by determining that the households of day care home providers not located in low-income areas are eligible for free or reduced price meals by use of a free and reduced price application.

Since there is a significant financial benefit associated with the classification of a day care home as a tier I day care home, this rule requires State agencies to establish overclaims against sponsors which improperly classify a home as a tier I day care home. The Department recognizes that, because day care home classification is a new process, there are various circumstances which may result in the misclassification of a day care home as a tier I day care home as sponsors and State agencies begin these new procedures. Therefore, FCS will issue guidance, in advance of the implementation of the two-tiered reimbursement structure, to address circumstances under which a State agency may decide not to assess overclaims for tier I misclassifications.

In addition, this rule requires that sponsoring organizations of day care homes include in their annual management plans a description of their system for making tier I day care home determinations. As is the case with all items included in the management plans, State agencies are required by section 226.6(f)(2) to review and approve the system. For the initial implementation period, sponsors are required to amend their plans to include this description by April 1, 1997. The Department recognizes that this requirement will impose an additional

administrative burden on sponsors and State agencies during the transition period to the two-tiered structure. However, given the potential for significant financial liability for sponsors and State agencies resulting from incorrect determinations, it is extremely important to ensure that each sponsor's method for making tier I determinations is appropriate and achieves the most accurate determinations possible using the most current available data.

Accordingly, this rule amends section 226.15 by redesignating paragraphs (f) through (j) as paragraphs (g) through (k), respectively, and by adding a new paragraph (f) to require sponsoring organizations to make tier I day care home determinations. New paragraph (f) also indicates, as discussed above and indicated in revised section 226.6(f)(9), that determinations of a home's eligibility as a tier I day care home will be valid for one year if based on the provider's household income, three years if based on school data, or until more current data are available if based on census data. Additionally, as discussed above, a sponsor, State agency, or FCS may change a determination if information becomes available indicating that a home is no longer in a qualified area. In addition, section 226.14(a) is amended to require that State agencies establish overclaims against sponsoring organizations of day care homes when they misclassify day care homes as tier I day care homes unless the State agency determines, in accordance with FCS guidance, that the misclassification was inadvertent. Finally, section 226.6(f)(2) is amended to add the requirement that the annual management plan include a description of the sponsor's system for making tier I day care home determinations. For initial implementation, each sponsoring organization of day care homes shall amend its plan, subject to review and approval by the State agency, to include this information by April 1, 1997.

Reimbursement Factors for Tier I Homes

Section 708(e)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act amended section 17(f)(3)(A) of the NSLA to establish the reimbursement factors for meals served in tier I day care homes as the factors in effect on July 1, 1996, with adjustments made to the factors on July 1, 1997, and each July 1 thereafter. This section of the Act further amended section 17(f)(3)(A) of the NSLA to require that the factors be rounded to the nearest lower whole cent, instead of to the nearest quarter-cent increment as previously required. Subsequent adjustments must be based on the unrounded rate from the preceding school year. In addition, annual adjustments, which were previously based on changes in the Consumer Price Index for food away from home, must now be made based on the Consumer Price Index for food at home.

Section 226.4(c) of the current regulations contains the base reimbursement rates for day care homes. These rates are adjusted annually on July 1 and announced in a notice in the Federal Register. Since the base reimbursement rates become out-of-date as soon as they are adjusted for inflation, including them in the regulation serves no useful purpose. Therefore, this rule will not include the base reimbursement rates established for tier I homes under Pub. L. 104–193. A notice announcing the reimbursement rates will continue to be published in the Federal Register each July 1, as provided for under section 226.4(g).

Accordingly, this rule amends section 226.4(c) to remove the base reimbursement rates and to indicate that meals served in tier I day care homes will be reimbursed at the current rates for such homes. Also, section 226.4(g) is amended to incorporate the revised method of making annual adjustments to the rates of reimbursement. Additional discussion of reimbursement for meals served in day care homes may be found in the next section of this preamble.

Tier II Family or Group Day Care Homes

Definition

Section 17(f)(3)(A)(iii) of the NSLA, as amended by section 708(e)(1) of the Act, describes a ''tier II family or group day care home'' as a day care home that does not meet the criteria set forth for a tier I family or group day care home. Specifically, a tier II family or group day care home would not be located in an area that meets the 50 percent free or reduced price eligibility criteria, based on elementary school or census data, nor would the day care home provider's household income be at or below 185 percent of the Federal income poverty guidelines.

Accordingly, this rule amends section 226.2 to add a definition of ''tier II day care home'' which defines such a home as one which does not meet the criteria for a tier I day care home.

Election by Providers

In contrast to tier I day care homes, the law provides that meals served in tier II day care homes may be eligible for two levels of reimbursement—the tier I day care home rates for meals served to income-eligible children and tier II rates for meals provided to all other children. The Act further amended section 17(f)(3)(A)(iii) of the NSLA to give providers operating tier II homes three options with regard to how meals served in such homes are reimbursed.

While the law does not specifically require sponsors to provide notification to tier II homes of their reimbursement options, section 17(f)(3)(A)(iii)(II), as amended by the Act, clearly gives day care homes, not their sponsoring organizations, the authority to elect the reimbursement option. Therefore, this rule requires sponsors to provide such notification.

Under the first option, a day care home provider may elect to have its sponsoring organization distribute income applications to the households of all children enrolled in the home. In that case, for all meals served to enrolled children who are determined to meet the criteria for free or reduced price meals, the home would receive the tier I reimbursement rates. Meals served to enrolled children who are not eligible for free or reduced price meals, or children from whose households completed income applications are not received, would be reimbursed at the tier II reimbursement rates.

These free and reduced price eligibility determinations could be made in several ways. First, as with the current method, families may document their child's eligibility for tier I reimbursements by completing an application which shows that their household income is at or below 185 percent of poverty. The categorical eligibility options at current section 226.23(e), which are based on section 9(d)(2) of the NSLA would continue to be available to all households submitting applications. In addition, section 17(f)(3)(A)(iii)(III)(bb) of the NSLA, as amended by section 708(e)(1) of the Act, provides other categorical eligibility options for households applying for tier I meal reimbursements on behalf of children in tier II homes. Such households may demonstrate eligibility if the child or parent participates in, or is subsidized under, any ''federally or State supported child care or other benefit program with an income eligibility limit that does not exceed'' 185 percent of poverty. As quickly as possible, the Department will issue a list of Federal programs which meet this criterion, and then each State will be required to do the same for its own State-funded programs. The Department wishes to emphasize that the process of providing these lists will be ongoing, and that both the

Department and the States will be updating the lists at least annually, or more often if necessary.

Alternatively, under the second option, if a day care home provider does not want to have income applications collected from the households of enrolled children, section 17(f)(3)(A)(iii)(III)(cc), as amended by the Act, provides that the provider may elect to have the sponsor identify only those children in tier II homes who are considered categorically eligible by virtue of their participation, or their parent's participation, in a Federally or State supported program with an income eligibility limit that does not exceed the standard for free or reduced price meals. In this situation, the day care home would receive the tier I reimbursements for meals served to the categorically eligible children, and the tier II rates of reimbursement for meals served to all other children.

It is the Department's position that the above option is only possible in those limited situations where the provider knows which enrolled children are categorically eligible, or when the sponsoring organization has direct access to eligibility information for other qualifying programs. For example, a day care home sponsoring organization which is also a school food authority would be able to identify, without applications being collected from households, children in tier II homes who are categorically eligible based on their or a sibling's receipt of free or reduced price school meals. Similarly, a provider may be able to identify as categorically eligible those children in tier II homes whose care is paid through State child care vouchers that are issued based on equivalent eligibility guidelines (assuming that programs permit the provider to share the eligibility information with the sponsor). In these cases, the sponsor would distribute income applications only to the households of the children identified as participating in programs making them categorically eligible for tier I rates. The households would have the option of completing the information relating to the qualifying program rather than the income information.

In most situations, however, providers and/or sponsors will only be able to identify children whose meals are eligible for tier I reimbursement by having income applications distributed to the households of all enrolled children, a fact that the Act does not explicitly recognize. Therefore, we envision that, when the provider elects this option, the process will most often operate as it does now in child care centers and as under the first option discussed above: applications will be distributed to all households of children in the care of the tier II day care provider in order to identify all income-eligible children in that home. These applications will gather information on participation in other qualifying programs, or will request family size and income information.

Though direct certification of eligibility can be a more streamlined, less burdensome method of determining eligibility, it also raises issues related to access to information and household confidentiality. The Department is interested in receiving comments on the merits of permitting direct certification of eligibility for sponsoring organizations of day care homes. Depending on the nature of these comments, we may issue a proposed rule on such a provision in the future.

Finally, as a third option set forth in the Act, a provider may elect to receive tier II reimbursements for meals served to all children in the home, regardless of income. In this case, the sponsoring organization would not be required to collect any income applications, nor would it need to attempt to identify categorically eligible children.

The law is deliberately structured to give the provider in a tier II day care home, rather than the sponsor, the choice as to whether or not income applications will be collected from households of children enrolled in the home since this choice will have an effect on the amount of reimbursement received by the provider. When a provider elects to have income applications collected, however, it is the responsibility of the sponsoring organization to collect them, to determine the eligibility of the children, and to maintain the confidentiality of the information collected.

Sponsors also will now have the responsibility of informing providers of their reimbursement options under the law. It is important for States to assist sponsors in carrying out this responsibility. Therefore, in addition to amending the regulations to incorporate the above-discussed provisions, the Department encourages State agencies during the implementation phases of this regulation to utilize a portion of the grant money provided under section 17(f)(3)(D) of the NSLA, as amended by section 708(e)(2) of Pub. L. 104–193, to further the efforts of sponsors in informing and educating day care home providers of their options.

It is the Department's opinion that in making the sponsoring organization, rather than the day care home provider, responsible for eligibility determinations, Congress recognized the need to provide an extra level of confidentiality to the households of children attending day care homes. Therefore, this rule also prohibits sponsoring organizations of day care homes from making free and reduced price eligibility information concerning individual households available to day care homes and otherwise limits the use of such information to persons directly connected with the administration and enforcement of the Program. Although sponsors are prohibited from releasing eligibility information concerning individual households, this rule will permit sponsors to inform providers in tier II homes of the numbers (not names) of identified income-eligible enrolled children. This will afford providers in tier II homes with more precise information concerning the accuracy of the reimbursement being paid to them by their sponsors, while protecting the confidentiality of individual households, as the law intended. In addition, the Department notes that section 9(b)(2)(C)(iii) of the NSLA was amended by section 108 of the Healthy Meals for Healthy Americans Act (Pub. L. 103–448) to clarify the permissible uses of free and reduced price information. The Department is currently developing regulations concerning this provision, and will make any necessary changes to the CACFP regulations at that time.

In addition, there is a concern that a provider in a tier II home will be unable to precisely calculate reimbursement without knowing the income eligibility status of each enrolled child in the home. The Department believes that allowing sponsoring organizations to inform providers in tier II homes of the numbers of identified income-eligible children, as discussed above, addresses this concern to a great extent, while at the same time protecting the confidentiality of the households of enrolled children. However, the Department is interested in receiving public comment on how best to balance the confidentiality of households with the needs of tier II day care home providers. Any comments that we receive will be addressed in a future rulemaking.

Accordingly, this rule amends sections 226.2, 226.6(f)(2), 226.18(b) and 226.23(e)(1) to incorporate the above provisions and to help ensure that providers are informed of their reimbursement options under the law. Specifically, the definition of *Documentation* in section 226.2 is amended to incorporate the expanded categorical eligibility provided in the law for use by tier II day care homes.

Section 226.6(f)(2) is further amended to require that the annual management plan submitted to the State agency by sponsoring organizations include a description of the sponsor's system of notifying tier II day care home providers of their options for reimbursement. For the implementation period, this rule requires that sponsors submit a plan amendment describing this system by April 1, 1997. Section 226.6(f) is further amended by adding a new paragraph, (10), which requires State agencies to annually provide sponsoring organizations with a list of State-funded programs which meet the special categorical eligibility requirements for children in tier II homes. Section 226.18(b) is amended to require that the agreement between the sponsoring organization and the day care home specify the responsibility of the sponsoring organization, upon the request of a tier II day care home, to collect applications and to determine the income eligibility of enrolled children, and/or to identify categorically eligible children. In addition, section 226.18(b) is further amended to require that the agreement include the sponsor's responsibility to inform providers of their options for reimbursement under the law. Finally, sections 226.23(e)(1)(i) and (iv) are amended by deleting the language exempting sponsoring organizations of day care homes from distributing income applications; by adding language to clarify that sponsors, at the request of the provider, must collect applications, determine the income eligibility of children in tier II day care homes, and maintain the information in a confidential manner; by adding language to indicate that sponsoring organizations may inform providers in tier II homes of the numbers of income-eligible enrolled children; and by clarifying the categorical eligibility procedures that apply to households of children in tier II day care homes, as discussed above.

Meal Counting and Reporting Procedures

Under this rule, all meals served in tier I homes or in tier II homes without any identified income-eligible children will be reimbursed at one rate—all tier I or all tier II, respectively. In such homes, meals can continue to be counted and reported to the sponsor as required by current regulations. However, for those tier II homes with a mix of income-eligible and non-income-eligible children, the introduction of two levels of reimbursement for meals necessitates a change in the way meals are counted and reported.

The following sections of the preamble discuss the various options available under the law for meal counting and reporting in tier II day care homes with a mix of income-eligible and nonincome-eligible children. It is important to consider the options in the context of the affected population. In the Department's opinion, it is likely that a relatively small percentage of day care homes participating in the program will contain a mix of income-eligible and non-income-eligible children, and therefore, be eligible for two levels of reimbursement. The majority of homes will likely be either tier I day care homes (i.e., those located in low-income areas or operated by a low-income provider) or tier II day care homes without any income-eligible children. The Department also recognizes that the mix of participating homes may vary significantly from one sponsor to another, thus making it important to provide as much flexibility as possible to sponsors in their meal counting and claiming options, while at the same time continuing to maintain program integrity.

Actual Meal Counts

Though it is a common current method of meal counting and reporting, taking actual meal counts is not currently required by regulations, and under a two-tiered reimbursement rate structure could impose an additional burden on some providers and sponsoring organizations. Under an actual counts system, for all tier II homes which elect to have income-eligible children identified, sponsors would have to collect and evaluate additional income applications, and/or identify new categorically eligible children, each time the enrollment of such a tier II home changes, or reimburse meals served to newly enrolled children whose income status has not been determined at the lower tier II rates. Because of the potential financial benefit, it is likely that providers under an actual meal count system will expect their sponsoring organizations to take immediate action to determine the income status of newly enrolled children.

Since only sponsors have access to the income eligibility information for each enrolled child in each of their day care homes, providers under an actual count system would now be required to record meal counts by each enrolled child's name. [Though we understand that a number of sponsoring organizations currently require providers to record meal counts by each enrolled child's name for monitoring purposes, it is not currently required by regulation.] Recording meal counts by each enrolled child's name is necessary under an actual count system because providers will not have access to income eligibility information or income status. Then, each provider would submit the meal count records, by child's name, to the sponsor. Finally, using the information collected and maintained by the sponsor on the income status of each enrolled child, the sponsor would identify and aggregate the total number of meals served which are eligible for tier I reimbursements, and the total number of meals served which are eligible for tier II reimbursements. This process would be performed for each ''mixed'' tier II home under a sponsor which uses actual meal counts in order to prepare the sponsoring organization's monthly claim for reimbursement.

One benefit of an actual count system is that reimbursements are more precisely targeted, as is the intention of the Act. However, the management sophistication of the sponsoring organization, the number of ''mixed'' tier II homes under a particular sponsorship, and the stability or instability of day care home enrollment in a sponsorship are also factors which must be considered when assessing the merits of various counting and claiming systems. The Act recognizes the potential burden on some sponsors and providers of performing actual meal counts, and includes a provision for simplified meal counting and reporting procedures, which is discussed below.

''Simplified'' Meal Counts

In addition to the usual method of recording and reporting actual meal counts, section 708(e)(1) of the Act added section 17(f)(3)(A)(iii)(IV) to the NSLA to require that the Department establish simplified meal counting and reporting procedures for tier II day care homes that receive two levels of reimbursement for meals served to enrolled children. The Act sets forth two possible alternatives that may be used, and also gives the Department the authority to develop its own simplified procedures.

The first simplified alternative set forth in the Act involves the sponsor setting, for each tier II day care home, annual percentages of the number of meals served that are to be reimbursed at the tier I and tier II reimbursement rates. The percentages would be based on the number of enrolled children identified as being from income-eligible households, and the number not from such households, in a specified month or other period. This procedure is currently an option for State agencies

for providing reimbursement in CACFP child care centers, adult day care centers, and outside-school-hours care centers, and is referred to in section 226.9(b)(2) of the regulations as ''claiming percentages.''

For example, under the ''claiming percentages'' alternative, if in the month of September a tier II day care home had 5 enrolled children, 2 of whom were determined by the sponsor to be eligible for free or reduced price meals, the home's claiming percentage for the coming year would be set at 40 percent tier I reimbursement and 60 percent tier II reimbursement. To receive reimbursement, the provider would only need to submit total meal counts by type (breakfast, lunch/supper, and supplements) each month, as is currently the case. The sponsor would apply the established claiming percentage to determine the home's reimbursement: 40 percent of all meals served in the month would receive the tier I reimbursement rates; 60 percent would receive the tier II rates.

A variation of ''claiming percentages'' is the ''blended rates'' method, also used by child care centers, adult day care centers, and outside-school-hours care centers, and contained in section 226.9(b)(3) of current regulations. Using the circumstances from the above example, by multiplying the tier I rate for lunches by 0.40 (40 percent), the tier II rate by 0.60 (60 percent), and then adding the products together, a ''blended rate'' would be derived. If the tier I rate for lunches is $1.5750 (the current rate through June 30, 1997), and the tier II rate is $0.95, this would result in a blended reimbursement rate of $1.20. All lunches served to enrolled children in the home would be reimbursed at this single rate. Again, the day care home would only need to submit total meal counts by type (breakfast, lunch/supper, supplements) to the sponsor. The total reimbursement paid to the home would be the same using either claiming percentages or blended rates.

The other alternative, presented in new section 17(f)(3)(A)(iii)(IV)(bb) of the NSLA, would annually place a tier II home into one of two or more ''reimbursement categories'' based on the percentage of income-eligible children in the home. Each reimbursement category would ''carry [ ] a set of reimbursement factors'' (i.e., the tier I rate, the tier II rate, or some other rate(s) within the range defined by tier I and tier II rates).

One example of the second alternative could involve establishing multiple reimbursement rates within the range defined by the tier I and tier II rates, and then assigning a home a rate based on the percentage of income-eligible children in the home. For example, four lunch rates could be established as follows: at $0.95 (the tier II rate), $1.5750 (the tier I rate for FY 1997), and two approximately equal points between the tier I and tier II rates—$1.16 and $1.36. Tier II homes with no income-eligible children would, of course, receive $0.95 for each lunch served to enrolled children, while tier II homes with all income-eligible children would receive the maximum rate (i.e., $1.5750) for each lunch served. However, homes with a mix of income-eligible and non-income-eligible children would be assigned one of the intermediate lunch rates ($1.16 or $1.36) based on the percentage of income-eligible children served. Homes with more than zero and up to 33.3 percent income-eligible children would receive $1.16 per lunch; homes with more than 33.3 percent and less than 66.7 percent income-eligible children would receive $1.36 per lunch; and homes with 66.7 percent or more income-eligible children would receive the maximum tier I rate of $1.5750. Again using the previous example, a home in which 40 percent of the children were income-eligible would receive $1.36 per lunch, an amount which is 16 cents per lunch higher than that derived with claiming percentages or blended rates.

Another variation of the ''reimbursement categories'' alternative set forth in the law would also involve assigning a home a rate based on the percentage of income-eligible children in the home. However, in this variation, only the tier I and tier II rates would be used. Any home with 50 percent or more income-eligible children would receive the tier I rates for all meals served; a home with less than 50 percent income-eligible children would receive the tier II rates for all meals served. In the above example, a home with 2 of 5 enrolled children identified as income-eligible (40 percent), would receive the tier II reimbursement rate of $0.95 for all lunches served.

Given the small number of children enrolled in the typical family day care home, any method other than actual counts would be especially sensitive to changes in enrollment. Any change in enrollment which results in a different mix of eligibility categories will change the actual percentage of income-eligible children in the home, thus skewing the reimbursements above or below the level which the home would receive under an actual meal count system. Again using the above example, if one income-eligible child is withdrawn from care, the home's actual percentage of children eligible for tier I meal reimbursements would decline from 40 percent to 25 percent. Under most of the simplified methods described above, the provider would then receive more reimbursement than would be the case if actual meal counts by category of reimbursement were used.

Counting and Claiming Methods Permitted by This Regulation

Based on its analysis of the relative advantages and disadvantages of each of the methods discussed above, the Department has decided to allow actual meal counts, claiming percentages, or blended rates for counting, reporting, and reimbursement of meals served in tier II day care homes serving children eligible for both tier I and tier II rates. In order to provide maximum flexibility, and recognizing the diversity and varying levels of management sophistication of sponsoring organizations, this interim rule provides sponsoring organizations the option of which of the methods to use for their day care homes. However, each sponsor must use only one method for all of its homes, and will be permitted to change this method no more frequently than annually. This limitation will minimize the potential for administrative confusion and allow State agencies to track each sponsor's system for oversight and claims edit purposes. Further, to mitigate the effects of enrollment changes when using the simplified methods, we are exercising the discretion provided to the Department under new section 17(f)(3)(A)(iii)(IV)(cc) of the NSLA, which permits ''such other simplified procedures as the Secretary may prescribe,'' by requiring that claiming percentages or blended rates for each home be adjusted at least semiannually by the sponsor, rather than annually as is the case for centers.

At this time, we are not adopting the use of the ''reimbursement categories'' approach described in the law and in two examples above. The above example involving multiple rates makes clear that at this time such an approach is potentially a far more complicated and unfamiliar method that does not offer any distinct advantages over claiming percentages or blended rates. Further, the option of reimbursing at the tier I rates for all meals served in a tier II home with 50 percent or more income-eligible children is far less precise in targeting benefits. The Department is also concerned that there is potential for abuse with this method, since a provider would gain substantial financial benefit when there are 50 percent or more income-eligible

children in the home during the month of the ''category'' determination. Finally, the use of the ''reimbursement categories'' approach could significantly reduce the Federal cost savings attributed to this provision.

To further alleviate the potential burden on sponsors of the meal counting and reporting provisions being implemented, this interim rule will not establish any specific dates for recalculation of claiming percentages or blended rates for homes, or for determining the income eligibility of enrolled children when utilizing either the simplified methods or actual counts. Rather, by requiring changes to the percentages/rates at each home no less frequently than every six months, and redeterminations of individual eligibility at least annually (as discussed below), sponsors will be able to implement a system to more evenly distribute the work load associated with these options over the course of the year.

The claiming percentages/blended rates alternative set forth in section 708(e)(1) of the Act indicates that the claiming percentage or blended rate be established based on the percentage of identified income-eligible children enrolled in a home ''in a specified month or other period.'' Although this interim regulation does not prescribe a specific time period for the enrollment determination, the Department believes it may be appropriate to consider methods which more accurately capture the income status of children enrolled in the home. Therefore, we are interested in receiving comments on two potential alternatives which would provide greater accuracy. The first alternative would involve a sponsor calculating the claiming percentage or blended rate based on a home's enrollment for an entire month using a list of enrolled children submitted by the day care home. The sponsor would assess the income eligibility status of each of the children enrolled in the home during the month and, using the enrollment list, derive the appropriate claiming percentage or blended rate. For example, if a home's enrollment list for the month of January indicates that 10 children were enrolled during the month, the home's claiming percentage or blended rate would be based on the number of identified income-eligible children, divided by 10. The second alternative would involve the day care home submitting an attendance list for the specified month. In contrast to the enrollment list, the sponsor using an attendance list would determine the claiming percentage or blended rate for the home using a weighted average of each enrolled child's level of participation during the month. The Department believes that both of these methods achieve greater accuracy in reimbursement payments, though, especially in the case of the attendance list, may impose an additional burden on the sponsor and day care homes.

Under the claiming percentages/blended rates option, for all tier II homes which elect to have the sponsor determine the income eligibility of enrolled children, the sponsor would make individual income eligibility determinations for enrolled children on an annual basis. The claiming percentage or blended rate would be set for the home at least every six months, taking into account any changes in enrollment that occurred in the six-month period. For example, for a tier II day care home that enters the program in January, the sponsor would take applications and determine the income eligibility of all enrolled children prior to the beginning of program operations. Based on the income status of the children enrolled in the home, a claiming percentage or blended rate would be established for the home. That percentage or rate would be used to reimburse meals served in the home for the next six months, regardless of changes in the home's enrollment during that period. By July, the sponsor would have assessed the income eligibility of those children new to the home since the January calculation, and would calculate a new claiming percentage or blended rate, to be used for the next six months, based on the income eligibility of each child enrolled in the home. Any child whose income status has not been determined at the time of the recalculation would be figured in the calculation at the tier II rate. The status of all children whose income eligibility had been determined in January would remain the same for the July calculation; redeterminations for these children would occur the following January.

The Department has some concerns about the potential for abuse of the claiming percentage/blended rates method; for example, low-income children who will not be in care on a regular basis could be enrolled by the provider during the month of the calculation so that the claiming percentage or blended rate is more favorable to the provider. Therefore, in an attempt to minimize potential abuse, this rule provides State agencies the authority to require a sponsoring organization to recalculate the claiming percentage or blended rate of any of its homes before the required semiannual calculation if a State agency has reason to believe that a home's percentage of income-eligible children has changed significantly or was incorrectly established in the previous calculation. State agencies and sponsors should be aware of and look for such potential abuse when conducting their monitoring activities. The Department is especially interested in receiving comments on ways to further minimize this potential abuse. This issue will be considered further and may be addressed in future guidance or in a future rulemaking concerning the overall management and integrity of the Program.

Although the claiming percentages/blended rates method will be adopted by this interim rule as the ''simplified meal counting and reporting procedures'' required by law, the Department is especially interested in receiving public comment on the second possible alternative in the law, described above as the ''reimbursement categories'' method, which is not being included in this interim rule. The Department is also interested in suggestions on other systems of meal counting and reporting that would not place undue burden on day care home providers or sponsors, but would provide for reimbursement payments that accurately reflect the income level of the households of enrolled children.

Accordingly, this rule amends section 226.13(c) to require that State agencies reimburse sponsoring organizations of day care homes based on the number of meals served to enrolled children, by meal type (breakfast, lunch/supper, and supplements) and by category (tier I and tier II), multiplied by the appropriate rates of reimbursement as established in the law. For the reasons discussed previously in this preamble, section 226.13(c) will no longer include the specific base reimbursement rates. The rule also adds a new section, 226.13(d), to set forth the meal counting requirements for day care homes, and to allow sponsoring organizations to select the reimbursement method (either actual counts, claiming percentage, or blended rates) that they will use to pay providers in tier II day care homes with a mix of incomeeligible and non-income-eligible children. If a sponsoring organization elects to use claiming percentages or blended rates, this rule requires in section 226.13(d) that they be recalculated at least every six months, unless the State agency requires the sponsor to recalculate a home's claiming percentage or blended rate before the required semiannual calculation if it has reason to believe that a home's percentage of income-eligible children has changed

significantly or was incorrectly established in the previous calculation. The claiming percentages or blended rates are based on individual income eligibility determinations made on an annual basis in accordance with section 226.23(e)(1).

For a detailed discussion of the implementation phases of this regulation, please refer to the Implementation section in the preamble below.

Implementation

In order to comply with the Act and implement the provisions of this regulation on July 1, 1997, sponsoring organizations will have to undertake several duties in advance of that date. First, using census data provided to the CACFP State agency by the Department, school data provided by the CACFP State agency by the State agency that administers the NSLP, or day care home providers' income information, all day care homes must be determined to be either tier I or tier II day care homes. As discussed above, once a home is designated as a tier I day care home, all meals served to enrolled children in the home are eligible for tier I rates of reimbursement (except for providers' own children, who must be income eligible). All tier II homes, unless they elect otherwise, will receive the tier II rates of reimbursement for all meals served to enrolled children.

For all tier II homes in which the provider elects to have income-eligible children identified, however, the sponsor must: (1) Collect applications and/or identify categorically eligible children; and (2) elect to use either actual meal counts, claiming percentages or blended rates as the method of reimbursement for all of its homes. If the information is not collected in order to separate actual meal counts by incomeeligible and non-income-eligible children, or to calculate a claiming percentage or blended rate for a tier II day care home by the July 1 implementation date, such a home must receive the lower tier II reimbursement rates for all meals served until the claiming percentage or blended rate is calculated, or the income status of children in an ''actual counts'' home is determined.

Reimbursement Factors for Tier II Homes

Section 708(e)(1) of the Act amended section 17(f)(3)(A)(iii)(I) of the NSLA to establish the reimbursement factors for meals served in tier II day care homes at 95 cents for lunches and suppers, 27 cents for breakfasts, and 13 cents for supplements, with adjustments made to the rates on July 1, 1997, and each July 1 thereafter. As is the case with tier I day care home reimbursement factors, the Act further amended section 17(f)(3)(A)(iii)(I)(bb) of the NSLA to require that these factors be rounded to the nearest lower cent increment, and that adjustments be based on changes to the Consumer Price Index for ''food at home'' instead of ''food away from home.'' As provided for in the Act, adjustments to the rates in subsequent years will be based on the unrounded rate from the preceding school year. As discussed in the preamble above, the base reimbursement rates will not be included in the regulatory language.

Accordingly, this rule further amends section 226.4(c) to indicate that, except for meals served to children identified as income eligible, as discussed above, all meals served in tier II day care homes will be reimbursed at the rates established in the law for tier II day care homes. Section 226.4(g) is also further amended to incorporate the revised method of adjusting the rates of reimbursement for tier II day care homes.

General Requirements for State Agencies, Sponsors and Homes

State Agency Program Reviews

Section 226.6(l) currently requires State agencies to maintain documentation of reviews of sponsoring organizations conducted, corrective actions prescribed, and follow-up efforts. This section further indicates that State agency reviews shall assess sponsoring organizations' compliance with regulations and Departmental and FCS instructions. Due to the significant financial benefit associated with classification of a day care home as a tier I home, this interim rule specifically requires that State agency reviews of sponsoring organizations of day care homes include an evaluation of the documentation used by sponsors to classify homes as tier I homes. Furthermore, due to the potentially significant financial liability to a State agency if homes are misclassified as tier I homes by sponsors, the Department strongly encourages—but will not require—State agencies to review the documentation supporting classification of tier I day care homes which qualify on the basis of school or census data at the time the sponsor initially makes the determination. Verification requirements for tier I homes qualifying on the basis of the provider's household income are addressed in this preamble below.

Accordingly, this rule amends section 226.6(l) to require that State agency reviews include the provision discussed above.

Documentation

In addition to changing the method by which sponsoring organizations reimburse meals served in day care homes, the amendments made to the CACFP by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 also necessitate changes in the records that day care home sponsors and providers are required to maintain. Section 226.15(e) sets forth the recordkeeping requirements for institutions, including sponsoring organizations of day care homes. In addition to documentation of the enrollment of each child in day care, and income eligibility information for enrolled providers' children, sponsors will now be required to maintain income eligibility information for children enrolled in tier II day care homes that have elected to have sponsors collect free or reduced price information. This includes family size and income information and/or evidence of categorical eligibility for children who participate in, or who have a parent participating in, a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the standard for free or reduced price meals. Finally, sponsors will also be required to maintain documentation of information used to classify day care homes as tier I day care homes. This would include the appropriate school or census data, and/or applications from providers whose households have been verified as eligible for free or reduced price meals.

Sections 226.18 (e) and (f) set forth similar recordkeeping requirements for day care homes. These provisions include the requirement that day care home providers maintain daily records of the number of children in attendance and the number of meals, by type (breakfast, lunch/supper, supplements), served to enrolled children. In addition, sponsors are required to submit family size and income information only for providers' own children, and day care homes must maintain documentation of this information. Under this rule, tier II day care homes in which the provider elects to have the sponsoring organization identify enrolled children who are eligible for free or reduced price meals, and whose sponsor employs ''actual counts'' claiming methods, will now be required to maintain and submit to the sponsor the number and types of meals (breakfast, lunch/supper, supplements) served each day to each enrolled child by name.

Accordingly, this rule amends section 226.15(e)(3) to add the above requirements for documentation for sponsoring organizations of day care homes. In addition, section 226.18(f) is amended by removing the second sentence, which restricts the collection and maintenance of family size and income information to that used to determine the eligibility of providers' own children, since this information may now also be collected from the households of children in tier II homes. Finally, section 226.18(e) is amended to add the recordkeeping requirements for tier II day care homes in which actual meal counts are used, as discussed above.

Verification

Section 17(f)(3)(A)(iii)(V) of the NSLA, as amended by section 708(e)(1) of Pub. L. 104–193, authorizes the Secretary to establish any necessary minimum verification requirements for tier II day care homes. In addition, the definition of tier I day care home in section 17(f)(3)(A)(ii)(I) of the NSLA requires that a day care home that qualifies as a tier I home on the basis of the provider's household income must have this income ''verified by the sponsoring organization of the home under regulations established by the Secretary,'' as mentioned earlier in this preamble.

Current requirements for conducting verification of eligibility of participants in various types of institutions, which include sponsoring organizations of day care homes, are contained in section 226.23(h). Because day care homes are considered ''nonpricing programs,'' State agencies currently follow the provisions of section 226.23(h)(1), for ''nonpricing programs,'' to verify the applications of day care home providers' own children. This section requires that State agencies review all applications on file to ensure that (1) the application has been correctly and completely executed by the household; (2) the institution (i.e., sponsoring organization) has correctly determined and classified the eligibility of enrolled participants; and (3) the institution (i.e., sponsoring organization) has accurately reported to the State agency the number of enrolled participants meeting the criteria for free or reduced price eligibility and the number that do not. This section also permits States to conduct additional verification to determine the validity of information provided by households on the application, in accordance with section 226.23(h)(2), the verification procedures for ''pricing programs.''

Now that applications will be collected from the households of some children enrolled in tier II day care homes, the amount of verification activity required to be conducted by State agencies will increase. However, this interim rule is not making any change to the current regulations for verification by State agencies, which will continue to follow the requirements set forth in sections 226.23(h)(1)–(2). Therefore, under this interim rule, State agencies will have the option of conducting the more extensive verification of applications under section 226.23(h)(2), which would include parental contact to verify the information provided on the applications, but are not required to do so. The Department recognizes the importance of verification to reduce the potential for fraud and abuse in the program and is considering what amount of additional verification is appropriate. The Department is considering the possibility of addressing the broad subject of verification of applications in a future proposed rulemaking concerning the overall management and integrity of the Program.

However, as required by the law, this rule adds the requirement that sponsoring organizations conduct verification of the provider's income, prior to approving the application, for all day care homes that qualify as tier I homes on the basis of the provider's income. Since the information provided on the application results in a large direct benefit to the provider, in the form of higher reimbursements (tier I) for meals served to all children in care, sponsors will be required to perform the more extensive verification of the provider's eligibility as described for pricing programs in current section 226.23(h)(2)(i). This involves verifying the income and other information provided on the approved application through collection of information from the household.

Accordingly, this rule amends section 226.23(h) by adding a new paragraph, (6), that contains these new requirements for verification by sponsors of family day care homes.

Annual Requirements for Sponsoring Organizations

Section 226.6(f) sets forth requirements that institutions, including sponsoring organizations of day care homes, must comply with on an annual basis. In addition to the current requirements, this rule also adds a requirement that sponsors annually submit current information on the total number of tier I and tier II day care homes, and a breakdown showing the total number of children enrolled in tier I homes, the total number of children enrolled in tier II homes, and the number of identified income-eligible children in tier II homes (i.e., those for whom tier I reimbursements would be claimed). Submission of these data will provide States with information necessary to help ensure that the reimbursement claims subsequently submitted by sponsors accurately reflect enrollment by reimbursement category. In addition, this information will be necessary to conduct the study of the tiering system's impact mandated by section 708(l) of the Act and will provide information regarding the characteristics of program beneficiaries.

Accordingly, this rule further amends section 226.6(f) by adding new paragraph (11) to require that the above described information on tier I and tier II day care homes and enrolled children be provided by sponsoring organizations to State agencies on an annual basis.

Monthly Reporting by Sponsoring Organizations

Section 226.13(b) requires that each sponsoring organization report, on a monthly basis to the State agency, the total number of meals, by type (breakfast, lunch/supper, supplements), served to children enrolled in day care homes. Due to the changes made to the reimbursement structure for day care homes by Pub. L. 104–193, sponsoring organizations will now be required to report the number of meals served by type and by category (i.e., tier I and tier II). This information will enable State agencies to pay claims to sponsoring organizations at the appropriate levels of reimbursement.

Accordingly, this rule amends section 226.13(b) to add the requirement that sponsoring organizations of day care homes report to the State agency on a monthly basis the number of meals served by type and by category.

Free and Reduced Price Policy Statements

Section 226.23 of the regulations requires that each institution, including a day care home sponsoring organization, submit when it applies for participation in the Program, a written policy statement concerning free and reduced price meals for use in all facilities under its jurisdiction. Under section 226.23(b), the policy statement for sponsoring organizations of day care homes must consist of an assurance to the State agency that all participants are served the same meals at no separate charge, and that there is no discrimination in the course of food

service. With the establishment of tier I and tier II day care homes under the Personal Responsibility and Work Opportunity Reconciliation Act, different meal reimbursements may now be received for children in the same day care home. Therefore, the Department believes it is important for the sponsoring organization's policy statement to also include an assurance that there will be no identification of tier I and tier II recipients in day care homes, and that sponsoring organizations will not share income eligibility information concerning individual households with the day care homes and will limit the use of the information to persons directly connected with the administration and enforcement of the Program.

The Department notes that section 703 of Pub. L. 104–193 amended section 9(b)(2)(D) of the NSLA to prohibit the requirement of annual submission of free and reduced price policy statements once the initial policy has been submitted unless there are substantive changes to the original statement. However, it is the Department's position that a change of the magnitude of the institution of the tiering system for day care homes in the CACFP constitutes a ''substantive change'' in the free and reduced price policy, and thus the revised free and reduced price policy statement must be submitted to the State agency for approval. Accordingly, this rule amends section 226.23(b) to add the above requirement.

Providers' Own Children

The Personal Responsibility and Work Opportunity Reconciliation Act did not make any changes to the current requirements concerning providers' own children. In order to receive reimbursement for meals served to providers' own children, the provider's household must meet the income eligibility guidelines for free or reduced price meals. The definitions of tier I and tier II homes in the law are such that meals served to providers' own children could only be eligible for reimbursement in tier I day care homes. Any provider in a non-needy area whose own children are eligible for reimbursement would, by virtue of being low income, meet the definition of a tier I home. It should be noted, however, that income eligibility still must be determined for providers' own children in homes that sponsors approve as tier I homes based on census or school data. Since current regulations already reflect the requirements of the law, this rule does not make any changes to the regulatory language concerning providers' own children.

List of Subjects

7 CFR Part 210

Breakfast, Children, Food assistance programs, Grant programs—Social programs, Lunch, Meal Supplements, Nutrition, Reporting and recordkeeping requirements, School Nutrition Program, Surplus agricultural commodities.

7 CFR Part 226

Day care, Food assistance programs, Grant programs-health, infants and children, Records, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Parts 210 and 226 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR Part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.9, a new paragraph (b)(20) is added to read as follows:

§ 210.9 Agreement with State agency.

* * * * *

(b) *Annual agreement.* * * *

(20) No later than March 1, 1997, and no later than December 31 of each year thereafter, provide the State agency with a list of all elementary schools under its jurisdiction in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day of the preceding October.

* * * * *

3. In § 210.19, a new paragraph (f) is added to read as follows:

§ 210.19 Additional responsibilities

* * * * *

(f) *Cooperation with the Child and Adult Care Food Program.* No later than March 15, 1997, and no later than February 1 each year thereafter, the State agency shall provide the State agency which administers the Child and Adult Care Food Program with a list of all elementary schools in the State participating in the National School Lunch Program in which 50 percent or more of enrolled children have been determined eligible for free or reduced price meals as of the last operating day of the preceding October. In addition, the State agency shall provide the current list, upon request, to sponsoring organizations of day care homes participating in the Child and Adult Care Food Program.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765, and 1766).

2. In § 226.2:

a. The definition of *Documentation* is amended by redesignating paragraph (c) as paragraph (d), and by adding a new paragraph (c); and

b. definitions of *Tier I day care home* and *Tier II day care home* are added.

The additions read as follows:

§ 226.2 Definitions.

* * * * *

Documentation means * * *

(c) For a child in a tier II day care home who is a member of a household participating in a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free and reduced price meals:

(1) the name(s), appropriate case number(s) and name of the qualifying program(s) for the child(ren); and

(2) the signature of an adult member of the household.

* * * * *

Tier I day care home means (a) a day care home that is operated by a provider whose household meets the income standards for free or reduced-price meals, as determined by the sponsoring organization based on a completed free and reduced price application, and whose income is verified by the sponsoring organization of the home in accordance with § 226.23(h)(6);

(b) a day care home that is located in an area served by a school enrolling elementary students in which at least 50 percent of the total number of children enrolled are certified eligible to receive free or reduced price meals; or

(c) a day care home that is located in a geographic area, as defined by FCS based on census data, in which at least 50 percent of the children residing in the area are members of households which meet the income standards for free or reduced price meals.

Tier II day care home means a day care home that does not meet the criteria for a *Tier I day care home.*

* * * * *

3. In § 226.4:

a. Paragraph (c) is revised; and

b. Paragraph (g)(1) is revised.

The revisions read as follows:

§ 226.4 Payments to States and use of funds.

* * * * *

(c) *Day care home funds.* For meals served to children in day care homes, funds shall be made available to each State agency in an amount no less than the sum of products obtained by multiplying:

(1) The number of breakfasts served in the Program within the State to children enrolled in tier I day care homes by the current tier I day care home rate for breakfasts;

(2) The number of breakfasts served in the Program within the State to children enrolled in tier II day care homes that have been determined eligible for free or reduced price meals by the current tier I day care home rate for breakfasts;

(3) The number of breakfasts served in the Program within the State to children enrolled in tier II day care homes that do not satisfy the eligibility standards for free or reduced price meals, or to children from whose households applications were not collected, by the current tier II day care home rate for breakfasts;

(4) The number of lunches and suppers served in the Program within the State to children enrolled in tier I day care homes by the current tier I day care home rate for lunches/suppers;

(5) The number of lunches and suppers served in the Program within the State to children enrolled in tier II day care homes that have been determined eligible for free or reduced price meals by the current tier I day care home rate for lunches/suppers;

(6) The number of lunches and suppers served in the Program within the State to children enrolled in tier II day care homes that do not satisfy the eligibility standards for free or reduced price meals, or to children from whose households applications were not collected, by the current tier II day care home rate for lunches/suppers;

(7) The number of supplements served in the Program within the State to children enrolled in tier I day care homes by the current tier I day care home rate for supplements;

(8) The number of supplements served in the Program within the State to children enrolled in tier II day care homes that have been determined eligible for free or reduced price meals by the current tier I day care home rate for supplements; and

(9) The number of supplements served in the Program within the State to children enrolled in tier II day care homes that do not satisfy the eligibility standards for free or reduced price meals, or to children from whose households applications were not collected, by the current tier II day care home rate for supplements.

* * * * *

(g) * * *

(1) The rates for meals served in tier I and tier II day care homes shall be adjusted annually, on July 1 (beginning July 1, 1997), on the basis of changes in the series for food at home of the Consumer Price Index for All Urban Consumers published by the Department of Labor. Such adjustments shall be rounded to the nearest lower cent based on changes measured over the most recent twelve-month period for which data are available. The adjustments shall be computed using the unrounded rate in effect for the preceding school year.

* * * * *

4. In § 226.6:

a. The second sentence of paragraph (f)(2) is revised;

b. Paragraphs (f)(9), (f)(10), and (f)(11) are added; and

c. A new sentence is added after the third sentence of paragraph (l) introductory text.

The additions and revision read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(f) * * *

(2) * * * Such a plan shall include: detailed information on the organizational administrative structure; the staff assigned to Program management and monitoring; administrative budget; procedures which will be used by the sponsoring organization to administer the Program in and disburse payments to the child care facilities under its jurisdiction; and, for sponsoring organizations of day care homes, a description of the system for making tier I day care home determinations, and a description of the system of notifying tier II day care homes of their options for reimbursement. For initial implementation of the two-tiered reimbursement structure for day care homes, by April 1, 1997, each sponsoring organization of day care homes shall submit an amendment to its plan, subject to review and approval by the State agency, describing its systems for making tier I day care home determinations and for notifying tier II day care homes of their options for reimbursement.

* * * * *

(9) Coordinate with the State agency which administers the National School Lunch Program to ensure the receipt of a list of elementary schools in the State in which at least one-half of the children enrolled are certified eligible to receive free or reduced price meals. The State agency shall provide the list to sponsoring organizations by April 1, 1997, and by each February 15 thereafter. The State agency also shall provide each sponsoring organization with census data, as provided to the State agency by FCS upon its availability on a decennial basis, showing areas in the State in which at least 50 percent of the children are from households meeting the income standards for free or reduced price meals. In addition, the State agency shall ensure that the most recent available data is used if the determination of a day care home's eligibility as a tier I day care home is made using school or census data. Determinations of a day care home's eligibility as a tier I day care home shall be valid for one year if based on a provider's household income, three years if based on school data, or until more current data are available if based on census data. However, a sponsoring organization, the State agency, or FCS may change the determination if information becomes available indicating that a home is no longer in a qualified area.

(10) Provide all sponsoring organizations of day care homes in the State with a listing of State-funded programs, participation in which by a parent or child will qualify a meal served to a child in a tier II home for the tier I rate of reimbursement.

(11) Require each sponsoring organization of day care homes to submit the total number of tier I and tier II day care homes that it sponsors; a breakdown showing the total number of children enrolled in tier I day care homes; the total number of children enrolled in tier II day care homes; and the number of children in tier II day care homes that have been identified as eligible for free or reduced price meals.

* * * * *

(l) * * * Program reviews shall include State agency evaluation of the documentation used by sponsoring organizations to classify their day care homes as tier I day care homes. * * *

* * * * *

5. In § 226.13:

a. Paragraph (b) is revised;

b. Paragraph (c) is revised; and

c. New paragraph (d) is added.

The addition and revisions read as follows:

§ 226.13 Food service payments to sponsoring organizations for day care homes.

* * * * *

(b) Each sponsoring organization shall report each month to the State agency the total number of meals, by type (breakfasts, lunches, suppers, and

supplements) and by category (tier I and tier II), served to children enrolled in approved day care homes.

(c) Each sponsoring organization shall receive payment for meals served to children enrolled in approved day care homes at the tier I and tier II reimbursement rates, as applicable, and as established by law and adjusted in accordance with § 226.4. However, the rates for lunches and suppers shall be reduced by the value of commodities established under § 226.5(b) for all sponsoring organizations for day care homes which have elected to receive commodities. For tier I day care homes, the full amount of food service payments shall be disbursed to each day care home on the basis of the number of meals served, by type, to enrolled children. For tier II day care homes, the full amount of food service payments shall be disbursed to each day care home on the basis of the number of meals served to enrolled children by type, and by category (tier I and tier II) as determined in accordance with paragraphs (d)(2) and (d)(3) of this section. However, the sponsoring organization may withhold from Program payments to each home an amount equal to costs incurred for the provision of Program foodstuffs or meals by the sponsoring organization on behalf of the home and with the home provider's written consent.

(d) As applicable, each sponsoring organization for day care homes shall:

(1) Require that tier I day care homes submit the number of meals served, by type, to enrolled children.

(2) Require that tier II day care homes in which the provider elects not to have the sponsoring organization identify enrolled children who are eligible for free or reduced price meals submit the number of meals served, by type, to enrolled children.

(3) Not more frequently than annually, select one of the methods described in paragraphs (d)(3) (i)–(iii) of this section for all tier II day care homes in which the provider elects to have the sponsoring organization identify enrolled children who are eligible for free or reduced price meals. In such homes, the sponsoring organization shall either:

(i) Require that such day care homes submit the number and types of meals served each day to each enrolled child by name. The sponsoring organization shall use the information submitted by the homes to produce an actual count, by type and by category (tier I and tier II), of meals served in the homes; or

(ii) Establish claiming percentages, not less frequently than semiannually, for each such day care home on the basis of the number of enrolled children determined eligible for free or reduced-price meals. The State agency may require a sponsoring organization to recalculate the claiming percentage for any of its day care homes before the required semiannual calculation if the State agency has reason to believe that a home's percentage of income-eligible children has changed significantly or was incorrectly established in the previous calculation. Under this system, day care homes shall be required to submit the number of meals served, by type, to enrolled children; or

(iii) Determine a blended per-meal rate of reimbursement, not less frequently than semiannually, for each such day care home by adding the products obtained by multiplying the applicable rate of reimbursement for each category (tier I and tier II) by the claiming percentage for that category. The State agency may require a sponsoring organization to recalculate the blended rate for any of its day care homes before the required semiannual calculation if the State agency has reason to believe that a home's percentage of income-eligible children has changed significantly or was incorrectly established in the previous calculation. Under this system, day care homes shall be required to submit the number of meals served, by type, to enrolled children.

6. In § 226.14, the introductory text of paragraph (a) is amended by adding a sentence after the first sentence to read as follows:

§ 226.14 Claims against institutions.

(a) * * * State agencies shall assert overclaims against any sponsoring organization of day care homes which misclassifies a day care home as a tier I day care home unless the misclassification is determined to be inadvertent under guidance issued by FCS. * * *

* * * * *

7. In § 226.15:

a. Paragraph(e)(3) is revised;

b. Paragraphs (f) through (j) are redesignated as paragraphs (g) through (k), respectively; and

a. A new paragraph (f) is added.

The addition and revision read as follows:

§ 226.15 Institution provisions.

* * * * *

(e) * * *

(3) Documentation of: the enrollment of each child at day care homes; information used to determine the eligibility of enrolled providers' children for free or reduced price meals; information used to classify day care homes as tier I day care homes; and information used to determine the eligibility of enrolled children in tier II day care homes that have been identified as eligible for free or reduced price meals in accordance with § 226.23(e)(1).

* * * * *

(f) *Day care home classifications.* Each sponsoring organization of day care homes shall determine which of the day care homes under its sponsorship are eligible as tier I day care homes. A sponsoring organization may use current school or census data provided by the State agency or free and reduced price applications collected from day care home providers in making a determination for each day care home. Determinations of a day care home's eligibility as a tier I day care home shall be valid for one year if based on a provider's household income, three years if based on school data, or until more current data are available if based on census data. However, a sponsoring organization, State agency, or FCS may change the determination if information becomes available indicating that a home is no longer in a qualified area.

* * * * *

8. In § 226.18:

a. Paragraphs (b)(11) and (b)(12) are added;

b. Paragraph (e) is amended by adding a new sentence after the first sentence; and

c. Paragraph (f) is amended by removing the second sentence.

The additions and revision read as follows:

§ 226.18 Day care home provisions.

* * * * *

(b) * * *

(11) The responsibility of the sponsoring organization to inform tier II day care homes of all of their options for receiving reimbursement for meals served to enrolled children.

(12) The responsibility of the sponsoring organization, upon the request of a tier II day care home, to collect applications and determine the eligibility of enrolled children for free or reduced price meals.

* * * * *

(e) * * * Each tier II day care home in which the provider elects to have the sponsoring organization identify enrolled children who are eligible for free or reduced price meals, and in which the sponsoring organization employs a meal counting and claiming system in accordance with § 226.13(d)(3)(i), shall maintain and submit each month to the sponsoring organization daily records of the

number and types of meals served to each enrolled child by name. * * *

* * * * *

9. In § 226.23:

a. Paragraph (b) is amended by adding a sentence at the end of the paragraph;

b. Paragraph (e)(1)(i) is revised;

c. Paragraph (e)(1)(iv) is revised; and

d. Paragraph (h)(6) is added.

The additions and revisions read as follows:

§ 226.23 Free and reduced price meals.

* * * * *

(b) * * * This statement shall also contain an assurance that there will be no identification of children in day care homes in which meals are reimbursed at both the tier I and tier II reimbursement rates, and that the sponsoring organization will not make any free and reduced price eligibility information concerning individual households available to day care homes and will otherwise limit the use of such information to persons directly connected with the administration and enforcement of the Program.

* * * * *

(e)(1) * * *

(i) For the purpose of determining eligibility for free and reduced price meals, institutions shall distribute applications for free and reduced price meals to the families of participants enrolled in the institution. Sponsoring organizations of day care homes shall distribute applications for free and reduced price meals to day care home providers who wish to enroll their own eligible children in the Program. At the request of a provider in a tier II day care home, sponsoring organizations of day care homes shall distribute applications for free and reduced price meals to households of all children enrolled in the home, or, if the provider in a tier II day care home so elects, shall distribute such applications only to households identified as being categorically eligible for tier I meals. These applications, and any other descriptive material distributed to such persons, shall contain only the family-size income levels for reduced price meal eligibility with an explanation that households with incomes less than or equal to these levels are eligible for free or reduced price meals. Such forms and descriptive materials may not contain the income standards for free meals. However, such forms and materials distributed by child care institutions other than sponsoring organizations of day care homes shall state that, if a child is a member of a food stamp household or AFDC assistance unit, the child is automatically eligible to receive free Program meal benefits, subject to the completion of the application as described in paragraph (e)(1)(ii) of this section; such forms and materials distributed by sponsoring organizations of day care homes shall state that, if a child or a child's parent is participating in or subsidized under a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free or reduced price meals, meals served to the child are automatically eligible for tier I reimbursement, subject to the completion of the application as described in paragraph (e)(1)(ii) of this section, and shall list any programs identified by the State agency as meeting this standard; such forms and materials distributed by adult day care centers shall state that, if an adult participant is a member of a food stamp household or is a SSI or Medicaid participant, the adult participant is automatically eligible to receive free Program meal benefits, subject to the completion of the application as described in paragraph (e)(1)(iii) of this section. Sponsoring organizations of day care homes shall not make free and reduced price eligibility information concerning individual households available to day care homes and shall otherwise limit the use of such information to persons directly connected with the administration and enforcement of the Program. However, sponsoring organizations may inform tier II day care homes of the number of identified income-eligible enrolled children.

* * * * *

(iv) If they so desire, households applying on behalf of children who are members of food stamp households or AFDC assistance units may apply for free meal benefits under this paragraph rather than under the procedures described in paragraph (e)(1)(ii) of this section. In addition, households of children enrolled in tier II day care homes who are participating in a Federally or State supported child care or other benefit program with an income eligibility limit that does not exceed the eligibility standard for free and reduced price meals may apply under this paragraph rather than under the procedures described in paragraph (e)(1)(ii) of this section. Households applying on behalf of children who are members of food stamp households, AFDC assistance units, or, for children enrolled in tier II day care homes, other qualifying Federal or State programs, shall be required to provide:

(A) The names and food stamp, AFDC, or for tier II homes, other case number of the child(ren) for whom automatic free meal eligibility is claimed; and

(B) the signature of an adult member of the household as provided for in paragraph (e)(1)(ii)(G) of this section. In accordance with paragraph (e)(1)(ii)(F) of this section, if a case number is provided, it may be used to verify the current certification for the child(ren) for whom free meal benefits are claimed. Whenever households apply for benefits for children not receiving food stamp, AFDC, or for tier II homes, other qualifying Federal or State program benefits, they must apply in accordance with the requirements set forth in paragraph (e)(1)(ii) of this section.

* * * * *

(h) * * *

(6) Verification procedures for sponsoring organizations of day care homes. Prior to approving an application for a day care home that qualifies as tier I day care home on the basis of the provider's household income, sponsoring organizations of day care homes shall conduct verification of such income in accordance with the procedures contained in paragraph (h)(2)(i) of this section.

Dated: December 30, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

Appendix to the Preamble

Note: This appendix will not appear in the Code of Federal Regulations

ECONOMIC IMPACT ANALYSIS

1. Title: Child and Adult Care Food Program: Improved Targeting of Day Care Home Reimbursements

2. Statutory Authority: Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193)

3. Background

This interim rule amends the Child and Adult Care Food Program (CACFP) regulations governing reimbursement rates for meals served in family or group day care homes by incorporating provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193); these provisions reduce the reimbursement rates for meals served to children who do not qualify for low-income subsidies. Specifically, this rule develops a two tier reimbursement structure for meals served to children enrolled in family or group day care homes. Under this structure, the level of reimbursement for meals served to enrolled children will be determined by: (1) the location of the day care home; (2) the income of the day care provider; or (3) the income of each enrolled child's household.

This interim rule targets CACFP meal reimbursement payments to low-income children and the day care home providers who serve them, where low-income is defined as not exceeding 185 percent of the Federal income poverty guidelines. This interim rule retains near-current reimbursement rates for meals served to children by providers residing in low-income areas or served by providers who are low-income. Near-current reimbursements will also be retained for meals served to children who are identified as low-income even if the provider neither resides in a low-income area nor is low-income. Meals served to all other children will be reimbursed at the lower rates. These changes will be effective July 1, 1997.

4. Cost/Benefit Assessment of Economic and Other Effects

Benefits

The need to reduce overall Federal expenditures has prompted a review of many programs and led to the legislative decision to improve the targeting of CACFP benefits to low-income children. To accomplish targeting of benefits, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 establishes two tiers of day care homes and reimbursement rates. Under tiering, any CACFP participating day care home (DCH) located in a low-income area or operated by a low-income provider is eligible for tier I status, where low-income areas are determined by local school or census data. All meals served in tier I DCHs are reimbursed at the higher set of reimbursement rates. All DCHs not qualifying for tier I are tier II DCHs. Meals served in tier II DCHs are reimbursed at the lower set of rates, with the exception that meals served to documented low-income children are reimbursed at the higher set of rates.

The initial establishment of the Child Care Food Program (CCFP) in November, 1975 required both types of CCFP providers, day care centers and DCHs, to make individual eligibility determinations based on each participating child's household size and income. Meal reimbursement rates paid to sponsors for meals served in DCHs were based on each enrolled child's documented eligibility for free, reduced price or paid meals. In order to be a DCH, which denotes a CCFP participating home in this analysis, a home has always had to (1) meet State licensing requirements, or be approved by a State or local agency and (2) be sponsored by an organization that assumes responsibility for ensuring the DCH's compliance with Federal and State regulations (these licensing and sponsorship requirements are still in effect).

In the years following establishment of the program, concerns were raised that the paperwork and recordkeeping requirements were creating barriers to DCH participation in the CCFP. In 1978, P.L. 95–627 eliminated free and reduced price eligibility determinations for individual children in DCHs (but left unchanged day care centers' individual eligibility determination requirements), and established a single reimbursement rate for each type of meal served in DCHs (lunches/suppers, breakfasts), and such changes encouraged day care providers' participation in the CCFP by reducing their administrative paperwork burden. The Omnibus Budget Reconciliation Act of 1981 added the requirement of a means test for providers to claim reimbursements for meals served to their own children in care. With this sole exception, all DCHs continued to receive the same reimbursements for all meals served to children in care, regardless of each child's income.

The day care portion of the CCFP (The CCFP was renamed the Child and Adult Care Food Program (CACFP) in 1989 when an adult day care component was added.) has experienced dramatic growth in both DCH participation and Federal government costs. From fiscal year 1986 to fiscal year 1995, the number of participating DCHs increased from 82,000 to 193,000, an increase of 134 percent. During the same period, meal reimbursements in nominal dollars increased from around $190 million to about $730 million, a 280 percent increase.[1,2] Program growth has occurred primarily among non-low-income children: table 1 shows that the proportion of low-income DCH participants decreased rapidly after individual eligibility determinations were eliminated in 1978. The table shows the proportion of DCH children with household incomes below 130 percent of the Federal income poverty guidelines decreased by 33 percentage points between 1977 and 1982 and by an additional 9 between 1982 and 1986. During the same periods the percentage of non-low-income children (above 185 percent of poverty) increased 46 and 7 percentage points, respectively. While empirical data is unavailable, it is believed that the income status of children in DCHs in 1996 was comparable to that in 1986. The growth in DCHs among non-low-income children is the impetus for P.L. 104–193's targeting of DCH benefits to low-income children.

TABLE 1.—INCOME ELIGIBILITY STATUS OF CHILDREN IN DCHS BY YEAR

Percent of poverty	Percent of DCH children in poverty strata by year(s)				
	1977[a]	1982[b]	Change between 1977–1982	1986[c]	Change between 1982–1986
≤130	58	25	−33	16	−9
131–185	24	11	−13	13	+2
≥185	18	64	+46	71	+7
Total	100	100	N/A	100	N/A

[a] Percentage represent the proportion of meals served by category: free (to children from hoseholds with income ≤130% of Federal income poverty guidelines), reduced price (131–185% of poverty), and paid (≥185% of poverty). Since most DCHs operating in 1977 were non-pricing, that is did not charge separately for each meal served, it is assumed children in care of different income strata have equal propensitives consume meals, which implies the proportion of meals served by category in 1977 is a reasonable proxy for children's income eligibility percentages (assuming children eligible for free or reduced-price benefirts generally became approved to receive them).

[b] Taken from a citation of the Evaluation of Child Care Food Program: Results of the Child Care Food Program: Results of the Child Impact Study Telephone Survey and Pilot Study in the Study of the Child Care Food Program[1] report.

[c] Taken from Study of the Child Care Food Program.[1]

The 1986 Study of the Child Care Food Program (CCFP Study)[1] that was conducted by Abt. and sponsored by USDA Food and Nutrition Service, found that approximately 70 percent of the children enrolled in DCHs in 1986 would not have been eligible for free or reduced price meals had a means test been performed on them. The establishment of a two tier reimbursement system focuses Federal child care benefits on children who are low-income.

The two tier reimbursement rate structure is expected to effect significant Federal budgetary savings. The six year projected savings (fiscal years 1997–2002) are approximately $2.2 billion (see table 4). The savings would result from 1) a reduction in the reimbursement rates for meals served in tier II (non-low-income) DCHs and 2) a decrease in the rate of growth of day care home participation in the CACFP and savings in sponsor administrative payments and audit expenditures resulting from this slower rate of growth. The estimated savings assume that in fiscal years 1997–2002 approximately 70 percent of the children in care will be ineligible for the higher reimbursement rates. This 70 percent assumption follows from the income levels of the children who participated in 1986.1

The reduction in reimbursement rates for meals served to children in tier II DCHs who are not documented income-eligible would result in savings of approximately $1.9 billion over the next six years (fiscal years

1997–2002). Rates for all meals served to these children-lunches/supper, breakfasts, and supplements-would decrease as shown in table 2. The rate change would result in a savings of about $0.63 for every lunch or supper served during fiscal year 1998, the first full fiscal year in which the new two tier system will be in effect. The savings would increase to about $0.70 per meal by fiscal year 2002. Breakfast savings would range from almost $0.61 per meal served in fiscal year 1998 to almost $0.66 in fiscal year 2002, and supplement savings would range from about $0.35 cents in fiscal year 1998 to almost $0.39 cents in fiscal year 2002.

TABLE 2.—CHANGES IN TIER II DCH MEAL REIMBURSEMENT RATES DUE TO TIERING

Fiscal year	Meal type	Projected meal reimbursement rates			
		DCH rates before P.L. 104–193	Tier II DCH rates after P.L. 104–193	Difference	Percent change
1998	Lunch/Supper	$1.6175	$0.9900	$0.6275	−38.8
	Breakfast	0.8850	0.2800	0.6050	−68.4
	Supplement	0.4825	0.1300	0.3525	−73.1
1999	Lunch/Supper	1.6600	1.0100	0.6500	−39.2
	Breakfast	0.9050	0.2900	0.6150	−68.0
	Supplement	0.4950	0.1400	0.3550	−71.7
2000	Lunch/Supper	1.7050	1.0400	0.6650	−39.0
	Breakfast	0.9275	0.3000	0.6275	−67.7
	Supplement	0.5075	0.1400	0.3675	−72.4
2001	Lunch/Supper	1.7500	1.0700	0.6800	−38.9
	Breakfast	0.9525	0.3100	0.6425	−67.5
	Supplement	0.5225	0.1400	0.3825	−73.2
2002	Lunch/Supper	1.7975	1.1000	0.6975	−38.8
	Breakfast	0.9750	0.3200	0.6550	−67.2
	Supplement	0.5350	0.1500	0.3850	−72.0

The growth of day care home participation in the CACFP is projected to slow as a result of the two tier rate structure, as some would-be providers are expected to perceive the program as offering insufficient financial incentive and/or being more administratively burdensome, relative to the financial benefits, than under prior law. This slowing in homes' participation is projected to cause a slowing in the rate of growth of sponsor administrative payments and meals served. As shown in table 3, it is estimated that in fiscal year 1998, the first full year of tiering, 27 million fewer meals will be served than would have been served under the current reimbursement rate structure (due to a slower growth rate in day care home participation). The six year effect (fiscal years 1997–2002) of this projected slowing of growth is a decrease in the number of meals served by 376 million, which is measured relative to the number projected under pre-July 1, 1997 reimbursement rates. The six year (fiscal years 1997–2002) projected savings from this slowing of program growth is approximately $300 million, measured in nominal dollars.

TABLE 3.—CHANGES IN DCH MEAL GROWTH RATE DUE TO TIERING

Fiscal year	Projected meals (in thousands) [b]					
	Before P.L. 104–193	After P.L. 104–193			Difference (total)	Percent change
		Tier I	Tier II	Total		
1997 [a]	817,177	243,528	568,232	811,760	−5,417	−0.7
1998	860,488	249,982	583,290	833,272	−27,216	−3.2
1999	904,372	256,356	598,164	854,520	−49,852	−5.5
2000	948,687	262,637	612,819	875,456	−73,231	−7.7
2001	993,275	268,809	627,221	896,029	−97,246	−9.8
2002	1,039,959	275,126	641,960	917,086	−122,873	−11.8
1997–2002	5,563,958	1,556,437	3,631,687	5,188,124	−375,834	−6.8

[a] Tiering does not become effective until the beginning of the fourth quarter (July 1, 1997) of fiscal year 1997.
[b] In fiscal year 1995, national DCH meal counts imply the average DCH served 19 breakfasts, 31 lunches/suppers, and 31 supplements in an average week.

Costs

This interim rule promulgates the two tier CACFP meal reimbursement system specified in P.L. 104–193. This system was designed to reduce Federal child care subsidies to providers and parents who are non-low-income. Tiering will reap a projected $2.2 billion in Federal savings over the next six fiscal years through (1) lower meal reimbursement payment rates for non-low-income DCH providers and non-low-income children and (2) secondary savings stemming from the lower rates, including the decrease in DCH growth rate. The non-low-income providers will likely pass some of their revenue loss on to their clientele (primarily non-low-income parents) through higher child care fees. Non-low-income providers and parents will thus bear most of ing from the projected $2.2 billion reduction in Federal expenditures—as was the intent of P.L. 104–193. In addition to these fiscal costs, operating the two tier system will place new

administrative burdens (costs) on DCH sponsors, State CACFP and State National School Lunch Program (NSLP) agencies, and NSLP school food authorities. The following analysis will show these administrative costs are minor in comparison with the costs to non-low-income providers and parents.

TABLE 4.—FEDERAL CACFP DCH COSTS BEFORE AND AFTER P.L. 104–193

Fiscal year	Before P.L. 104–193			After P.L. 104–193					Change			
	Total DCH	Total meals	Admin. and audit	Total DCH	Meal			Admin. and audit	Total DCH		Meal (percent)	Admin. and audit (percent)
					Tier I meal	Tier II meal	Total meal		Dollars	Percent		
1997[a]	$952,099	$809,639	$142,460	$871,012	$242,083	$487,300	$729,383	$141,630	−$81,087	−8.5	−9.9	−0.6
1998	1,026,020	875,034	150,986	693,686	257,400	289,518	546,918	146,768	−332,324	−32.4	−37.5	−2.8
1999	1,104,105	943,294	160,810	727,323	270,711	305,178	575,950	151,374	−376,781	−34.1	−38.9	−5.9
2000	1,186,699	1,015,754	170,945	758,701	284,903	321,110	606,013	152,688	−427,998	−36.1	−40.3	−10.7
2001	1,273,343	1,091,954	181,389	796,114	299,951	337,907	637,858	158,256	−477,229	−37.5	−41.6	−12.8
2002	1,365,473	1,173,027	192,446	835,559	315,070	356,536	671,607	163,952	−529,913	−38.8	−42.7	−14.8
1997–2002	6,907,739	5,908,702	999,035	4,682,396	1,670,179	2,097,550	3,767,729	914,667	−2,225,342	−32.2	−36.2	−8.4

[a] Tiering does not become effective until the beginning of the fourth quarter (July 1, 1997) of fiscal year 1997.

The costs of tiering for DCH providers will be addressed first and then followed by a discussion of the costs for families with children in tier II DCHs. The new administrative burdens that tiering imposes on DCH sponsors will be discussed next and then followed by an examination of the administrative costs for CACFP State agencies, NSLP State agencies, and NSLP school food authorities.

Implementation and use of the tiering system will have both implementation and periodically recurring costs for the entities discussed above. The implementation costs will depend highly on the specifics of the State and local CACFP procedures currently in place and on the reimbursement procedures selected under the new rule, and will therefore vary greatly across States and localities. Because of the lack of information on these current practices, quantification of the implementation costs, within a reasonable degree of accuracy, is precluded. It is recognized that these costs may be significant, especially for State CACFP agencies (sponsors will need more technical assistance). The recurring costs are more evident and quantifiable, and what follows is a discussion of the recurring costs the affected entities will incur.

I. Costs to Providers

For CACFP providers the costs of tiering will have an administrative burden component, but will be primarily financial, due to the lower meal reimbursement rates, and will fall on providers operating tier II DCHs tier II DCHs will experience a decrease in CACFP reimbursements; the majority of the $2.2 billion in projected savings is due to lower reimbursements to non-mixed tier II DCHs (a mixed tier II DCH is a tier II DCH where at least one child in care is documented income-eligible; meals served to such children are reimbursed at the higher rates). Non-mixed tier II DCHs comprise an estimated 64 percent of all DCHs (see Costs to Sponsors for explanation). For the average non-mixed tier II DCH, the July 1, 1997 tier II rate decrease will cause weekly CACFP revenues to decline 51 percent, from $82 to $402, which follows directly from the average DCH's weekly meal mix footnoted in table 3 and the meal reimbursements shown in table 2. Since the average DCH has about 6 children in care,[6] this $42 decrease ($82–$40) represents about $7 per child.

a. Potential Tier II Provider Responses to Lower CACFP Reimbursements

Providers of tier II DCHs will most likely respond to decreased CACFP revenues through some combination of raising fees, absorbing the loss, providing care for more children, and reducing operating costs. Studies of the day care market corroborate this. They find that in general providers will not try to pass all of the CACFP loss on to the families they serve,[3,4] but rather employ some of these other options as well.

The amount which non-low-income providers can pass on through higher fees will depend on the character of their local day care market. Tier II providers in markets that are competitive on the basis of fee will be discouraged from passing all of the loss on to parents, as they need to keep fees approximately in line with the local going rate to retain their customers.[4] Providers in less competitive markets, such as those where there is a child care shortage, will be able to raise fees and pass most of their loss along to parents. An example of a fee competitive market is one where there are several day care homes operating in a moderate income neighborhood, all having nearly equal appeal to parents and nearly equal fees, but with only a few of the homes being tier II DCHs (the rest being non-CACFP homes or tier I DCHs). Although the tier II DCH providers would be tempted to raise fees in response to the CACFP reimbursement rate decrease, the non-CACFP and tier I DCHs would probably leave their fees unchanged; their doing so may cause the tier II DCHs to leave their fees unchanged as well. Empirical data on the relative extent of these two market scenarios is unavailable. However, because the markets affected by tiering serve mostly non-low-income families who, if fees are raised, would probably choose to pay higher fees to stay with their current provider, fee competitive markets may be the less common variety.

Data from the 1990 Profile of Child Care Settings Study [3] (PCCS) and the 1976 National Day Care Home Study [3] (NDCH) provide information on the likelihood that providers will respond to decreased CACFP reimbursements by absorbing the loss or providing care for more children. The PCCS and NDCH studies indicate that most tier II CACFP providers are not in a position to completely absorb a significant portion of the reduction in meal reimbursements. The 1976–80 NDCH study found that homes like DCHs (sponsored and regulated) do not make even moderate operating surpluses (profits)-the mean net hourly wage for providers in regulated, sponsored homes was $1.92 (in 1976 dollars), 83 percent of the 1976 minimum wage rate of $2.30 per hour (all DCHs are sponsored and regulated, but not all sponsored, regulated homes are DCHs, i.e., participate in the CACFP). The PCCS study suggests that providers' economic situation may have even worsened since the NDCH study: PCCS found that in real dollars, fees for regulated, sponsored homes decreased between the period 1976–80 and 1990. Thus, the PCCS data suggests that providers in sponsored homes, such as DCHs, do not have much of an operating surplus to buffer a cut in subsidies. Other PCCS findings indicate that most providers will not consider taking more children into care as a means of increasing revenues to offset the decrease in CACFP reimbursements. PCCS found that most providers of sponsored, regulated homes are operating near their legal capacity and that over half of all such providers surveyed indicated they are unwilling to take more children into care.

b. Most Probable Provider Responses to Lower CACFP Reimbursements

The PCCS and NDCH data, and the data suggesting that some day care markets may discourage the raising of fees4 imply that in general tier II providers will respond to decreased meal reimbursements by reducing operating costs; absorbing a small portion of the decrease; and raising fees a modest amount, but will not respond by providing care for more children.

c. Effects on Non-Mixed Tier II Providers

Tier II providers who respond to decreased CACFP revenues by noticeably reducing operating costs or sharply raising fees may, however, only exacerbate their income shortage, as parents may be unwilling to accept the providers' decreased child care expenditures (reduced operating costs) or higher fees and could respond by moving their children to other providers, which would decrease the original provider's income until replacement children could be found. However, given that fees for DCHs (i.e., regulated and sponsored providers) tend to be higher than those found in unregulated

day care homes,[5,6] parents who patronize DCHs have demonstrated a willingness to pay a premium for regulated care and are therefore less likely to be sensitive to an increase in provider fees.

The new reimbursement rates will have a significant economic impact on non-mixed tier II DCHs. Based on FCS program data [2] and projected increases in the food at home series of the Consumer Price Index, when DCH reimbursement rates are first tiered on July 1, 1997 the weighted average per meal rate for non-mixed tier II DCHs will drop from the tier I level of $1.01 down to $0.49, a 51 percent decrease. The July 1, 1997 rate cut will cause the average non-mixed tier II DCH's weekly CACFP revenues to decline from $82 to $40, a $42 decrease (a 51 percent decline), where the average DCH serves an average weekly meal mix of 19 breakfasts, 31 lunches/suppers, and 31 supplements [2] to six children.[6] These estimates incorporate the dynamic nature of the regulated day care market, where the annual provider turnover rate is approximately 20 percent [1]: they assume that lowering the meal reimbursement rates will decrease the incentive for day care homes to join the CACFP and also increase the rate of departure for existing DCHs. Numerically, this translates into the expectation that the lower rates will cause the annual rate of growth in DCHs to decrease from around 5 percent to about 2.5 percent.

d. Effects on Mixed Tier II Providers

Although minor in comparison with non-mixed tier II CACFP revenue decreases, tiering's actual meal count system will place a new administrative burden on some portion of the sub-group of mixed tier II providers (an estimated 10 percent of DCHs are mixed tier II) whose sponsors require them to use an actual meal counts system (some providers already keep such counts). There will be no new burden for providers using either of the ''simplified'' meal counts systems (as explained in the Costs to Sponsors, Sponsor Meal Claiming Burden section). In an actual counts system, the mixed tier II DCHs would provide the sponsor, for each child in care, the number of reimbursable meals the child was served, by meal type and would also identify each child by name. This reporting requirement represents an increase in burden over the current system where some providers only record and provide sponsors with the total number of reimbursable meals served, by meal type. Few DCHs are expected to incur this burden, however, as this system is burdensome for the sponsors; it is being assumed that only 5 percent of sponsors will choose an actual count system, and that in addition, all such sponsors will be small-serving no more than 50 DCHs, on average only 30 (see the Costs to Sponsors, Sponsor Meal Claiming Burden section). The estimated weekly provider burden associated with an actual count system in an average DCH (serving 6 children [6] and operating 5 days a week [1]) is 30 minutes, which assumes a burden of 1 minute per child per day. The estimated annual burden for such a home is therefore 25 hours. This translates into an annual fiscal er provider. This calculation assumes that providers of regulated, sponsored care are making about $5.30 per hour for their services ($5.30 is an inflation adjusted version of the NDCH study [5] finding that providers of sponsored, regulated homes earned an average of $1.92 per hour in 1976).

II. Costs to Families

Tiering imposes few costs on low-income families. One cost, limited to low-income families with children in mixed tier II DCHs, is their being asked to provide household income information. Although the families are not obligated to provide this information, based on NSLP data,[7] it is expected that 90 percent will (see Costs to Sponsors section for explanation). Providing this information consumes time and could lessen a family's privacy. Sponsors have the authority to verify the income information at a later time, in which case the family would be contacted and asked to submit supporting documentation for the income figures provided, representing a second burden and further intrusion on family privacy. Despite being authorized to conduct income verifications, few sponsors are expected to do so in light of the associated burden. As explained below, there may also be a limited number of low-income families with children in non-mixed tier II DCHs; these families will experience costs similar to those described below for non-low-income families.

Tiering is intended to reduce subsidies to non-low-income families, which as previously stated, is the intent of P.L. 104–193. This reduction has potential cost implications for these families. The Costs to Providers section explained that providers will likely respond to the decrease in CACFP reimbursements through some combination of reducing operating expenses, raising fees, and absorbing the loss. At one extreme of the day care market, an area not fee-competitive in which DCH providers have the freedom to increase fees to completely offset the reduced reimbursements, fees could increase by about $7 a week per child. This would recent increase over the average weekly fees, $70, that parents of non-low-income children currently pay for care ($70 is an inflation-adjusted version of the CCFP Study's figure of $49).[1] At the other extreme of the day care market, a highly fee competitive setting, fees would remain unchanged. Although empirical data on the relative extent of these market types is unavailable, data from the Costs to Providers section suggest that the former market type may be more common: first, the markets affected by tiering are serving non-low-income families who, if fees are raised, would probably choose to pay the higher fees to stay with their current provider; and second, families patronizing DCHs, which tend to charge higher fees than unregulated providers, have demonstrated a willingness to pay more for the higher quality of regulated care.

a. Competitive Markets

In child care markets where providers need to hold fees down to retain customers, providers are constrained to react to the rate decrease through some mixture of absorbing the cut and cutting operating costs. The providers being considered here are primarily those operating non-mixed tier II DCHs, the group that will experience the greatest tiering related CACFP revenue drop. To cut costs, these tier II providers may change their management practices relating to food service and developmental opportunities and materials, among other potential changes. Although intended as cost cutting measures, some of these changes could have effects on the children in care. In the area of developmental opportunities and materials, lower reimbursements may leave providers somewhat less able to afford the non-essential games, books, audio or video tapes, etc. that were attainable when CACFP reimbursements were covering a greater proportion of food expenses. There are also a number of areas in food service where providers could reduce costs, and these would impact children in tier II DCHs. One way to reduce costs would be deciding that certain snacks under the old, higher CACFP reimbursements will not be served under the new, lower rates, such as an afternoon snack. Providers might also respond by decreasing meal portions, although by specifying minimum serving sizes, CACFP regulations limit the extent to which this could be done. Other means of cutting food service costs could include replacing more expensive ingredients and food items with less expensive ones. While purchasing lower quality items and ingredients may have detrimental nutritional implications, substituting something more affordable could also represent a nutritional improvement if wise choices are made. The CACFP study mandated by P.L. 104–193 will compare the nutritional quality of meals served in post-tiering tier II DCHs with the quality of meals served in those DCHs before tiering, among other pre/post-tiering comparisons.

Should a tier II provider choose to cut operating costs, a family may find the resulting conditions unacceptable and seek out another provider. The search for a new provider entails costs in the time spent finding a new provider, the potential for lost wages, and the potential for subsequent transportation and added inconvenience costs if the more suitable providers are not as conveniently located as the original caregiver. It is also possible that providers constrained to hold fees down will exit the DCH market, which would also require a family to find another provider.

Under the fee competitive market scenario just considered, which primarily affect non-low-income families, there is the potential that some of the low-income children in mixed tier II DCHs will experience some of the same costs the children in non-mixed tier II DCHs will experience. Although some of the meals served in a mixed tier II DCH will be eligible for the higher reimbursement rates, others will not. If the provider is constrained to not raise fees to recoup the decreased reimbursements for the non-low-income families, the provider will experience a net decrease in revenue as discussed above, the provider will likely respond to this net decrease by either reducing operating costs or absorbing the loss. Reducing operating costs would affect the low-income children in care. However, USDA believes only 10 percent of all DCHs will be mixed and that only a portion of these mixed homes are in competitive fee markets; under these conditions, few low-income children would be affected.

b. Non-Competitive Markets

In the other child care market being considered, where providers are not as constrained to hold fees down, providers will likely respond to the rate decrease primarily through increased fees. As suggested earlier in this section, because tiering mainly affects non-low-income families who will likely choose to pay increased provider fees, this type of market may be more common than the competitive fee variety. In non-fee competitive markets, families can respond to increased fees by either paying the higher fees, moving their children to more affordable providers, or dropping out of the labor force (fully or in part) to care for their children. Each choice has different costs for families. In cases where the parents elect not to move the child, the parents will be assuming greater responsibility for food costs than under the previous system where the Federal government was performing that function (the intent of P.L. 104–193). In the case where the provider raises fees enough to completely offset the reduced reimbursements, fees could increase by about $7 a week per child, representing a 10 percent increase over pre-tiering average fees.1 In the second case, where the parents move a child to achieve lower fees, the child may have to break established relationships with the current provider and other children in care. The third alternative, dropping out of the labor force, would presumably occur rarely, as the raising of fees will primarily affect higher income families who will probably choose to absorb the increase.

c. Effects of Tiering on Child Care Choices

Studies show that child care regulations enforce practices beneficial to childhood development,[5] but the preceding discussion on the relationship between lower meal reimbursements and higher fees implies that under tiering the number of families choosing sponsored, regulated care may decrease. The 1976–80 NDCH Study compared fees among unregulated providers; regulated but unsponsored providers; and providers who are both regulated and sponsored. The study found that providers who are both regulated and sponsored had the highest fees. In the years since that study, fees charged by regulated and sponsored providers have decreased until equaling the fees charged by regulated but unsponsored providers.[3] This equaling of fees in regulated homes coincided with the post-1978 rapid growth of DCHs. CACFP reimbursements—available only to sponsored, regulated homes—may have played a role in bringing down fees charged by regulated, sponsored providers to equal fees of regulated, unsponsored providers, which suggests that tiering's lowering of CACFP rates may cause regulated, sponsored fees to rise. Even if the post-1978 decline in regulated, sponsored provider fees is attributable to other factors, it is likely (as discussed in the Costs to Providers section) that decreased CACFP reimbursements will cause regulated, sponsored providers to raise fees, at least in some markets, which may shift children into more affordable, possibly unregulated homes. Similarly, the decreased CACFP reimbursements might cause some currently regulated and sponsored providers to consider moving out of regulated care. Therefore, the possibility that CACFP rates will no longer encourage the placement of children in regulated care is another cost that tiering may bring to non-low-income children and even some low-income children.

d. Intended Effect of Tiering

An important fact, worth reiterating, is that tiering primarily affects families with incomes above 185 percent of the Federal income poverty guidelines (non-low-income), as intended by P.L.104–193 The only low-income families potentially affected by tiering will be those with children in tier II DCHs. This presumably encompasses few families, as it is believed, as mentioned earlier, that (1) only 10 percent of all DCHs will be mixed (having both non-low-income and documented low-income children in care) and that only 40 percent of the children in an average mixed DCH will be low-income (see Tier II Household Income-Eligibility Determination Burden under Costs to Sponsors); and (2) that the clear majority of all other low-income children will be in tier I DCHs. Similarly, the providers affected by tiering will presumably be all non-low-income, since providers with incomes below 185 percent of the Federal income poverty guidelines are eligible for tier I status. The Federal income poverty guidelines are designed to take into account family size, so that a given household will qualify for low-income status at a lower income level than will a household that has more children.

III. Costs to Sponsors

The two tier structure will impose several new administrative burdens on organizations that sponsor DCHs, including determining and documenting which DCHs and children are entitled to receive the higher set of reimbursement rates; verifying the income of all providers who qualify for tier I status based on provider income; and collecting and reporting separate tier I and tier II meal, enrollment, and provider counts.

a. Tiering Determination Burden

All sponsors will be responsible for determining whether each of their DCHs is tier I or II. A sponsor can approve a DCH for tier I status if the DCH is located in a low-income area or the provider is low-income. A low-income area is defined as one in which the local elementary school has at least one-half of its enrollment approved for free or reduced price NSLP lunches, or an area in which at least one-half of the resident children are low income, according to the most recent census data. A sponsor can also approve a DCH for tier I status if sponsor can demonstrate low-income status (income no more than 185 percent of the Federal income poverty guidelines). If a sponsor finds a provider to be low-income, the sponsor must verify the provider's income before formally approving the DCH for tier I status. Sponsors must annually re-determine every Tier I eligibility determination based on a provider's income. Because verification is a non-trivial burden to sponsors, it is expected that whenever possible sponsors will approve providers for tier I on the basis of area eligibility. Area eligibility determinations offer sponsors the added benefit of being valid for three years when school data is used and until more recent data is available, when census data is used, at most ten years.

The verification that sponsors will perform on income-approved tier I providers consists of obtaining pay stubs, tax returns, or some other form of independent income documentation to establish that the information provided on providers' tier I income applications is accurate. The proposed rule mandates this verification to protect the government against providers' financial incentive to qualify for tier I; the average tier I provider would receive 42 more dollars a week in CACFP meal reimbursements in 1998 than would the average non-mixed tier II provider (as was explained in the Costs to Providers section). Collecting corroborating income documentation from providers for tier I income eligibility determinations represents an increase over the current CACFP DCH application review requirements, which were established by the Omnibus Budget Reconciliation Act of 1981, P.L. 97–35. P.L. 93–35 eliminated CACFP DCH meal reimbursements for providers' own children in care, unless a provider submits an application demonstrating low-income status. Sponsors are not required to obtain supporting income information for these applications and typically make eligibility determinations based on the application information alone. After P.L. 104–193 providers will submit enrollment applications, which have different sponsor verification requirements. The first type will be submitted by providers seeking to qualify for tier I, so that, if approved for tier I, all meals served in the applying provider's home, including those to the provider's own children in care, would be reimbursed at the higher rates. The second type of application would be submitted by providers approved for tier I by area eligibility seeking to claim meals served to their own children in care. P.L. 104–193 does not supersede P.L. 97–35, so the requirement that a DCH provider demonstrate low-income status in order to claim meals served to the provider's own children will remain in effect. For income applications for tier I status, P.L. 104–193 requires that income verification (collection of substantiating income documentation) be performed. For applications from area-approved tier I providers seeking to claim meals served to their own children, sponsors will continue to approve these applications based on application content alone, which entails no new burden for sponsors.

Provider income data from special tabulations of PCCS data[6] together with data on average household sizes[8] indicate that about 20 percent of all DCH providers are low-income and are therefore eligible for tier I on the basis of income. Empirical data on the percentage of DCHs that qualify for tier I on the basis of area eligibility is unavailable. An estimate for this percentage was derived using (1) the finding from the CCFP Study that 30 percent of all enrolled DCH children are low-income and (2) the assumption that DCH children are equally

distributed across all DCHs, i.e., 10 percent of DCHs provide care for 10 percent of total DCH enrollment, regardless of the DCH's tiering status. Applying this distribution assumption to income-eligible tier I DCHs (20 percent of all DCHs) implies they enroll 20 percent of total DCH enrollment. Applying the distribution assumption to mixed tier II DCHs, which comprise 10 percent of all DCHs implies they enroll 10 percent of total DCH enrollment. Then, taking the assumption that 40 percent of mixed tier II DCH enrollment is low-income and applying it to the mixed tier II enrollment percentage (10 percent of total DCH enrollment) implies the low-income children in mixed tier II DCHs comprise 4 percent of total DCH enrollment (4% is 40% of 10%). Therefore, the enrollment in income-eligible tier I DCHs and mixed tier II DCHs, whose meals are all reimbursed at the higher rates, represents 24 percent of total DCH enrollment. The CCFP Study's finding that 30 percent of total DCH enrollment is low-income was then used as a basis for assuming that approximately 30 percent of all DCH meals will be reimbursed at the higher rates. When the 30 percent assumption is compared to the 24 percent of DCH enrollment receiving higher rates (in income-eligible tier I and mixed tier II DCHs), it implies that the residual percentage of enrollment whose meals are reimbursed at higher rates, 6 percent of total (30–24), is receiving care in area-eligible tier I DCHs. Since 6 percent of total DCH enrollment resides in area-eligible tier I DCHs, the enrollment distribution assumption implies area-eligible tier I DCHs represent 6 percent of all DCHs. With 20 percent of all DCHs being income-eligible for tier I and another 6 percent being area-eligible for tier I, a total of 26 percent of all DCHs are expected to become tier I DCHs.[m]

It is assumed that a substantial proportion of low-income, income-eligible tier I providers reside in low-income areas, thereby making them area-eligible also. The burden associated with verifying incomes for income-eligible providers will presumably cause sponsors to approve DCHs for tier I on the basis of area eligibility whenever possible. It was therefore assumed that one-half of the income-eligible DCHs (10 percent of total) will be approved for tier I on the basis of area eligibility rather than income, which together with the 6 tier I by area eligibility. The remaining one-half of tier I income-eligible DCHs, 10 percent of total, will be approved on the basis of income.

The dynamic nature of the DCH market will increase sponsors' tiering determination burdens. Data from the CCFP Study indicates the DCH market has an annual provider turnover rate of approximately 20 percent.[1] This volatility will lead sponsors to make more tiering determinations than would be necessary for a stable DCH population. See section e: Quantification of New Burdens for Sponsors for the quantification of sponsors' tiering determination burden.

b. Household Income-Eligibility Determination Burden on Sponsors

This interim rule mirrors P.L. 104–193 in the method it prescribes for approving low-income children in tier II DCHs for the higher meal reimbursement rates. Tier II DCHs wishing to secure higher reimbursements for their low-income children (''mixed'' tier II DCHs) are to direct their sponsor to collect income information from the households of the children in care. Sponsors so directed must request information from every household served by the requesting DCH. Sponsors have the responsibility of determining the income-eligibility for each responding household. Meals served to children with household incomes not exceeding 185 percent of the Federal income poverty guidelines—income-eligible/low-income children—are eligible to receive the higher reimbursement rates. Also eligible for the higher rates are meals served to children who participate in or live in households that participate in any Federal or State means tested program with an equivalent income eligibility standard-at or below 185 percent of the Federal income poverty guidelines.

Sponsors must maintain supporting documentation for all children approved for higher meal reimbursement rates. At least annually, sponsors must re-determine the eligibility of all children previously deemed income-eligible and also give all children previously deemed not income-eligible another opportunity to demonstrate low-income status. For the purposes of this analysis, it is assumed that sponsors will meet the annual re-determination requirement by cycling through each of their mixed DCHs once a year and making income-eligibility determinations on all children currently enrolled at that time. Sponsors must also make income-eligibility determinations for children who enter a mixed tier II DCH after the sponsor has made its annual income-eligibility determinations for that DCH. The schedule that sponsors will use to perform these latter income determinations is determined by the sponsor's choice of meal claiming system. Although it is providers who decide whether the sponsor must make income-eligibility determinations, sponsors decide which meal count system the sponsor and all its DCHs will use. The meal count system chosen determines the schedule on which income-eligibility determinations are made for children who enter mixed DCHs after the annual eligibility re-determination review has occurred. Sponsors can choose between an actual counts system and a ''simplified'' counts version. Each of these systems and its associated income-eligibility determination schedule is described below.

The interim rule does not prescribe any additional income eligibility determination requirements, beyond annual re-determinations, for sponsors using an actual counts system. Rather, the provider's incentive structure under this system will determine the income-eligibility determination schedule used. In this system, providers of mixed tier II DCHs must report the number of meals served to each child by type and identify each child by name. Sponsors then use income-eligibility information to determine which set of reimbursements each child's meals are entitled to, with meals served to documented income-eligible children entitled to reimbursement at the higher rates. With reimbursements being determined on a per-child basis in actual meal count systems, providers of mixed tier II DCHs have the incentive to maximize the number of documented income-eligible children in their care. A provider can do this by directing its sponsor to make an eligibility determination on each new child upon the child's entering the provider's DCH. Assuming that most providers in actual count systems will behave in this manner, sponsors in these systems will be making income-eligibility determinations on an irregular, ongoing basis.

The interim rule prescribes the income-eligibility determination schedule that sponsors employing simplified counting must use to determine the income-eligibility of children who enter mixed tier II DCHs outside the sponsor's annual income-eligibility determination cycle. The schedule requires that at least semi-annually, sponsors make income-eligibility determinations on all children who enter a mixed DCH in the prior 6 months. Given that sponsors are already required to annually re-determine eligibility, sponsors using a simplified counting system will likely perform income-eligibility determinations twice a year: annual re-determinations at the beginning of the year and a second determination at mid-year for those children who entered a mixed DCH sometime in the preceding 6 months.

The two meal count systems will require sponsors to make near equal numbers of eligibility determinations; the burdens are expected to be equal. See section e: Quantification of Burdens for the burden estimates.

c. Data Collection and Reporting Burden for Sponsors

Tiering will place several new, although minor, reporting requirements on sponsors. Sponsors will now have to annually collect and report to their State CACFP agency separate enrollment counts for tier I and tier II DCHs and an enrollment count for documented income-eligible children in mixed tier II DCHs (those DCHs serving at least one documented low-income child). Sponsors must also annually report the number of tier I and tier II DCHs they sponsor. Finally, in the management plan that every sponsor submits to its agency, the sponsor will now have to include a description of how it will make DCH tiering determinations.

d. Sponsor Meal Claiming Burden

Under tiering, sponsors will have new burdens related to meal counting and claiming. Before tiering, sponsors were only required to claim meals by meal type. Under tiering, sponsors will have to claim meals both by reimbursement category and, within each category, by meal type. The claiming of meals served in tier I and tier II DCHs remains straightforward. It simply entails separating claims submitted by tier I and tier II DCHs, which amounts to categorizing the meals, and then, within each category, summing meal counts by type. In contrast, claiming for mixed DCHs requires that for each mixed DCH sponsors split out the meals by reimbursement category, which will typically be a more time consuming process than that for non-mixed DCHs. After the

meals from mixed DCHs are separated by category, the meals are summed, within each category, by meal type, just as was done for claims from tier I and tier II DCHs. The method that sponsors use to split out mixed DCH claims depends on whether the sponsor is using an actual or simplified meal counting system, as described below.

As previously noted, in an actual count system, mixed tier II DCHs record the number of meals served to each enrolled child, by meal type, and provide the sponsor with a claim that lists the meals served to each child by type and identifies each child by name. In such a system, the sponsor splits the meals into reimbursement categories by determining the appropriate reimbursement category for each child's meals based on the child's income eligibility status—the reason each child is identified by name. In contrast, in a simplified count system, the sponsor splits the counts into the two reimbursement categories by applying either blended rates or claiming percentages to the provider's aggregated counts (both blended rates and claiming percentages produce identical claims). In the case of claiming percentages, a sponsor computes, for each DCH, the number of meals of each type entitled to the higher reimbursements by multiplying the total number of meals claimed of that type by the proportion of children in that DCH who have been determined income-eligible (all other meals are reimbursed at the lower reimbursements). The procedure for blended rates is essentially the same. In simplified count systems, the semi-annual collection of income information described in section b: Household Income-Eligibility Determination Burden is used to update the claiming percentages/blended rates for each DCH every six months. The updated claiming percentages/blended rates reflect the current proportion of income eligible children in the DCH.

Simplified counting is less burdensome to sponsors than an actual count system. Actual counts require the sponsor to compare the provider's meal claim against a list of the DCH's income-eligible children to identify which children's meals are entitled to the higher rate. The sponsor then groups meals by reimbursement category and finally, sums by type within each category to produce an aggregated count of meals by category and by type. In contrast, to reach the same result in a simplified system, the sponsor need only multiply the aggregate meal counts by the DCH's claiming percentages/blended rates. Because of the relative ease of meal claiming in a simplified counts system, it is expected that only 5 percent of all sponsors will opt for actual counts and that all will be small sponsors (serving no more than 50 DCHs).

e. Quantification of New Burdens for Sponsors

To quantify the effects of this interim rule on sponsors, a framework of estimates and assumptions, based on previous studies of the program and current program data, was constructed. Creating this framework, which enables the scaling of burden estimates according to sponsor size, produces more precise burden estimates. The first step in creating it, was dividing the approximately 1,240 current sponsors into three groups, as shown in table 5: (1) small sponsors which serve no more than 50 DCHs, on average about 30 DCHs; (2) medium sponsors which serve between 51 and 300 DCHs, on average about 200; (3) large sponsors which serve more than 300 DCHs, on average about 400.[1,2]

TABLE 5.—SPONSOR AND DCH CHARACTERISTIES

Sponsor characteristics	Sponsor size		
	Small	Medium	Large
Percent of all Sponsors	50%	30%	20%
Percent of all DCHs Served	9%	40%	51%
Average Number of DCHs Served per Sponsor	30	200	400
Number of Sponsors (Total = 1,240) in Category	620	372	248

Based on these definitions, 50 percent of all sponsors are small in size and account for 9 percent of all DCHs; 30 percent are of medium size and account for 40 percent of all DCHs; and 20 percent are large and account for 51 percent of all DCHs.[1,2] Next, based on DCH providers' and enrolled children's income data, respectively from special PCCS tabulations [6] and the CCFP Study [1] and other assumptions discussed above under Tiering Determination Burden, it was estimated that 26 percent of all DCHs will be approved for tier I; 64 percent will be tier II, and 10 percent will be mixed tier II, as shown in table 6.

TABLE 6.—DCH CHARACTERISTICS

DCH Type	Percent of All DCHs
Tier I	26
Area Eligible Only	6
Income Eligible Only	10
Area & Income Eligible	10
Sum	26

TABLE 6.—DCH CHARACTERISTICS—Continued

DCH Type	Percent of All DCHs
Approved by Area	16
Approved by Income	10
Sum	26
Tier II	74
Mixed	10
Non-Mixed	64

Finally, it was assumed that 40 percent of sponsors will serve at least one mixed tier II DCH. This last assumption is rooted in the finding from the CCFP study [1] that almost 70 percent of DCH children are non-low-income. When this finding is coupled with the assumption that smaller sponsors are more likely to serve economically homogeneous DCHs, by virtue of their limited geographic coverage, the implication is that small sponsors are less likely than medium or large sponsors to serve mixed tier II DCHs. This conclusion, together with the CCFP Study [1] data that indicates nearly 50 percent of all sponsors are small, is the basis for assuming 40 percent of sponsors will serve at least one mixed tier II DCH. Based on these estimates and assumptions, the approximately 193,000 DCHs in operation [2] were distributed across the three size categories of sponsors based on the number of mixed tier II DCHs predicted for the average sponsor in each sponsor category and the relative sizes of the tier I and tier II DCH populations.

The estimates for new sponsor burden contained in the interim rule are presented in table 7. Shown are estimates for the annual burden hours imposed on each sponsor category, and the percentage of sponsors affected within each sponsor category. Of the listed burdens, only Meal Claiming recurs periodically (monthly). The other burdens occur only once or twice a year (with the exception of household income determinations in an actual meal count system, but the number of sponsors involved is minimal, 5 percent of total, i.e., 60). The estimates make the assumption that economies of scale are realized only for Meal

Claiming burdens, where the recurring nature of the burden would presumably give larger sponsors a sufficient incentive to establish efficient meal claiming systems.

TABLE 7.—ESTIMATED ANNUAL SPONSOR BURDEN FROM TWO TIER DCH SYSTEM

Burden	Estimated Annual Sponsor Burden by Sponsor Size (Hours)			Estimated Percent of Sponsors Affected in Each Size Category		
	Small	Medium	Large	Small	Medium	Large
Tiering Determinations:						
1. Low income Providers (Includes Verification)	4	52	96	100	100	100
2. Area Eligibility	2	28	51	100	100	100
Tier II Household Income-Eligibility Determinations ..	9	40	80	27	53	50
Data Collection and Reporting [a]	4	15	28	100	100	100
Meal Claiming:						
1. Actual Counts System (with mixed tier II DCHs) ..	20	N/A [b]	N/A [b]	10	N/A [b]	N/A [b]
2. Simplified Counts System (with mixed tier II DCHs)	10	45	67	16	52	50
3. No Mixed Tier II DCHs	5	22	34	74	48	50

[a] Includes tier I, tier II, and tier II low-income enrollment counts; tier I and tier II DCH counts; and description of tiering determination method in sponsor management plan.

[b] Due to the burden associated with actual meal counts systems, it is expected that only small sponsors will choose actual counts.

The tiering determinations burden estimates were calculated using data from the CCFP Study [1] and special tabulations from PCCS [6], which indicate that 26 percent of all DCHs are eligible for tier I and the assumption that sponsors will choose to approve providers for tier I on the basis of area eligibility whenever possible. Thus, it is assumed that 16 percent of all DCHs will be approved for tier I using area eligibility information, while the remaining tier I eligible DCHs (10 percent) will be approved using provider income information. For the burden estimate, these percentages were assumed to hold for the average sponsor in each sponsor category so that, for example, the average small sponsor (serving 30 DCHs) with its 4.8 tier I homes would approve 3.0 of the 4.8 on the basis of area eligibility (4.8 * 16% / 26%) and the remaining 1.8 DCHs on the basis of the provider's income (4.8 * 10% / 26%). The estimates incorporate the dynamic nature of the DCH market, which has an annual provider turnover rate estimated to be between 18 and 25 percent.[1] This volatility will require sponsors to make more tiering determinations than would be necessary for a stable DCH population. Finally, the estimates for area eligibility assume that sponsors identify income-eligible DCHs using sponsors' preexisting knowledge of economic conditions in areas where DCHs reside and that sponsors are thereby able to easily identify DCHs lying far outside all income-eligible areas. This approach would allow sponsors to focus their efforts on DCHs with reasonable probabilities of qualifying for tier I by area eligibility. This analysis assumes such an approach will be taken and that the average sponsor will consider 3 homes for low-income area eligibility for every 2 it finds eligible and approves.

The tier II household income-eligibility determinations estimates were calculated by estimating the income-eligibility burden associated with the average DCH and then multiplying that figure by the average number of DCHs a sponsor in each of the three categories oversees.[1] The number of children in care in an average DCH was used as the starting point.[6] This figure was then inflated to account for the fact that on average, there is a 30 percent turnover of children every 6 months in the average day care home.[9] This inflated figure represents the number of children who could potentially submit an application over a year's time. From this group of potential applicants, the number of submitted applications was calculated using an assumed 90 percent application response rate (based on the NSLP's 80 percent rate) [7] and the assumption that on average about 40 percent of the children in mixed tier II DCHs are income-eligible. There is a clear financial incentive for providers to encourage their low-income families to submit income information to sponsors. This incentive and providers' close relationships with parents suggest that providers will attempt to persuade parents to provide the income information and will thereby achieve a response rate greater than the NSLP's 80 percent; ninety percent was chosen. The assumption that 40 percent of children in mixed tier II DCHs are income-eligible. There is a clear financial incentive for providers to encourage their low-income families to submit income information to sponsors. This incentive and providers' close relationships with parents suggest that providers will attempt to persuade parents to provide the income information and will thereby achieve a response rate greater than the NSLP's 80 percent; ninety percent was chosen. The assumption that 40 percent of children in mixed tier II DCHs are income eligible is based on two assumptions: (1) most DCHs with more than 60 percent of their enrollment income-eligible will be tier I and 2) some tier II DCH providers that serve one or two income-eligible children will not realize or avail themselves of the children's low-income status and therefore will not ask their sponsor to determine the children's income-eligibility (placing the DCH in the non-mixed tier II category). The two preceding assumptions suggest a percentage below 50 percent; forty percent was chosen.

The data collection and reporting burden was calculated assuming that the average sponsor will spend about 12 hours complying with the new requirements in this area, with 10 of these hours for the new data related requirements and the remaining 2 for the requirement that each sponsor now provide a description of its plan for making DCH tiering determinations in its management plan. The 12 hour burden implies annual burdens of 4, 15, and 28 hours for small, medium, and large sponsors, respectively. These estimates are consistent with this burden being an expansion on the current CACFP requirement that sponsors report quarterly the number of DCHs served and the DCHs' enrollment and submit annually a sponsor management plan.

The meal claiming burden was calculated assuming that the monthly burden resulting from the new meal claiming requirements will be 2 hours for the average sponsor. This weighted average implies a burden that increases with sponsor size and the number of mixed tier II DCHs being served. The estimates make the assumption that an actual counts system will impose twice the meal claiming burden of a simplified counts system due to the relative difficulty that sponsors using actual counts are expected to have in producing meal claims broken down by reimbursement category and meal type (relative to the effort required under a simplified counts system). The estimates further assume that among sponsors using a simplified count system, the average meal claiming burden for sponsors without any mixed DC one-half the average burden for sponsors serving mixed DCHs. This assumption is consistent with the lower level of effort required to process meal claims from non-mixed DCHs. In addition, as described above, the estimates assume economies of scale so that the burdens are not directly proportional to the number of DCHs a sponsor serves.

Table 8 translates the burdens displayed in table 7 into fiscal costs. The fiscal costs were produced assuming that wage rates for employees of child care centers3, $8.00 per hour in 1997 dollars (which has been adjusted for inflation), are reasonable proxies for the wage rates of workers in DCH sponsors. The table implies that the annual increase in administrative costs due to tiering, for the average small, medium, and large sponsor, are about $160, $1,200, and $2,100 (in 1997 dollars), respectively. These costs represent less than one percent of the total annual administrative payments the average small, medium, and large sponsor would receive from USDA (in 1997 dollars):

$27 thousand, $150 thousand, and $270 thousand (in 1997 dollars), respectively.

TABLE 8[a].—ESTIMATED ANNUAL SPONSOR FISCAL COST FROM TWO TIER DCH SYSTEM

Burden	Estimated Annual Sponsor Fiscal Cost by Sponsor Size (In 1997 Dollars)			Estimated Percent of Sponsors Affected in Each Size Category		
	Small	Medium	Large	Small	Medium	Large
Tiering Determinations:						
1. Low Income Providers (Includes Verification)	$32	$416	$768	100	100	100
2. Area Eligibility	16	224	408	100	100	100
Tier II Household Income-Eligibility Determinations	72	320	640	27	53	50
Data Collection and Reporting[b]	32	120	224	100	100	100
Meal Claiming:						
1. Actual Counts System (with mixed tier II DCHs)	160	[c]N/A	[c]N/A	10	[c]N/A	[c]N/A
2. Simplified Counts System (with mixed tier II DCHs)	80	360	536	16	52	50
3. No Mixed Tier II DCHs	40	176	272	74	48	50
Weighted Average Cost	158	1,201	2,124			
Average USDA Administrative Payments, Annual	27,000	150,000	270,000			
Wght. Avg. Cost as Percent of Admin. Payments	0.6	0.8	0.8			

[a] The sponsor costs shown in table 8 equal the burden hours multiplied by a wage rate of $8.00/hour, as described in the text.
[b] Includes tier I, tier II, and tier II low-income enrollment counts; tier I and tier II DCH counts; and description of tiering determination method in sponsor management plan.
[c] Due to the burden associated with actual counts systems, it is expected that only small sponsors will choose actual counts.

IV. Costs to CACFP State Agencies

The costs to CACFP State agencies consist of their being required to provide sponsors with low-income area eligibility data; increased requirements related to sponsor review, particularly the auditing of the documentation for income-eligible children; and their obligation to provide sponsors with technical assistance. In terms of area eligibility data, these agencies will be responsible for providing (1) census data identifying all State census blocks where at least 50 percent of the children are from low-income households (no more than 185 percent of the Federal income poverty guidelines) and (2) an annually updated list of all State elementary schools that have more than 50 percent of their enrollment certified to receive free or reduced-price lunches under the NSLP (implies hof no more than 185 percent of Federal income poverty guidelines). The agencies' other responsibility relating to area eligibility data is determining in which instances census data should be used over NSLP information: The interim rule states that sponsors are in general supposed to use the most recent school data available in making tiering determinations, but that the State CACFP agency should determine when census data should supersede it, by following instructions in forthcoming guidance from USDA. For the average State CACFP agency, it is estimated that its obligation to provide sponsors with elementary school data annually and providing census data as it becomes available represents an average annual burden of 23 hours, which assumes each instance of data transmittal and subsequent follow-up takes 1 hour. This estimated burden is equivalent to $184 using the same wage assumptions used in table 8.

Tiering will also increase State agencies' sponsor review requirements. When reviewing sponsors, State agencies will now have to review the documentation used to deem children in tier II DCHs income-eligible for the higher meal reimbursements as well as the documentation for tier I providers approved on the basis of income. However, the agency is only held responsible for ensuring that the application form is completed correctly and that the stated income actually falls below 185 percent of the Federal income poverty guidelines. The state is given the option to verify the documentation, but because of the amount of time involved in verification, it is expected that very few will routinely do so. The agencies are also responsible for ensuring that the most current data available was used in making area eligibility determinations (a negligible burden), but are not required to verify the determinations. For the average State CACFP agency, it is estimated that performing these reviews amounts to an annual burden of 23 hours, with some States expending much less than this amount and others much more, depending on the size and number of sponsors in the State. This estimated burden is equivalent to $184 using the same wage assumptions used in table 8.

State CACFP agencies will likely see an appreciable increase in their training and technical assistance burden as the transition to the new two tier system is made. Under the new system, State agencies will have to provide new guidance and training on all new aspects of CACFP introduced by tiering, for example, DCH tiering determinations, new meal counting and claiming procedures, and new data reporting requirements. This burden will likely persist for the first several years the new system is in place. It is believed that the new training and technical assistance burdens represents about 10–20 hours of new burden per sponsor per year for a State agency. For the average State, this implies an annual burden of between 230 and 460 hours (between $1,840 and $3,680) for the first several years of tiering and presumably abating thereafter. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193) provides some funds to help State CACFP agencies make the transition. It directs the Secretary of Agriculture to set aside $5 million of fiscal year 1997 CACFP funds for one-time grants to State CACFP agencies. These grants must be used to aid States, sponsors, and DCHs with making the transition to the new system. P.L. 104–193 allows each of the 54 State agencies to retain up to 30 percent of its total grant for State agency use. If all States agencies retained the maximum allowable, a total of approximately $1.5 million would be retained at the State level, with the remaining $3.5 million going to DCHs and their sponsors.

The interim rule adds a new requirement to the management plans that sponsors must submit annually. Now, each sponsor must describe the approach it will use to make DCH tiering determinations. Reviewing this component of the plan will presumably place minimal additional burden on the State agency.

There is the potential that in some States the decreased CACFP reimbursements will lead to an increase in the State-wide average fee charged by providers. This increase may have the effect of increasing State expenditures for subsidized child care, as a State's subsidized care payments are often based on the average fee that providers in the State are charging. Being unable to predict a numerical value for the effect the reimbursement rate cut will have on provider fees, as discussed previously under Costs to Providers, quantifying this potential cost to States is precluded. However, this interim rule does not require States to increase their payments for subsidized child care.

V. Costs to NSLP State Agencies and NSLP School Food Authorities

Under P.L. 104–193, State NSLP agencies are required to annually provide a list of all State elementary schools in which at least 50 percent of the enrollment is certified to receive free or reduced-price NSLP lunches. However, these agencies do not currently collect school-level information. NSLP School Food Authorities (SFAs), which are generally school districts, are the only

entities other than the schools that collect this data. SFAs are also more able than schools to provide the data to the NSLP State agency. The interim rule accommodates this situation by directing SFAs to inform their State NSLP agency of the elementary schools that have at least 50 percent of their enrollment certified to receive free or reduced-price NSLP lunches. It is estimated [10] that roughly 5,000 SFAs will contain the approximately 11,000 elementary schools meeting this criterion, and that the annual average reporting burden on an SFA will be roughly 1.5 hours ($12). The NSLP State agencies will receive the lists of elementary schools from their SFAs, compile and presumably do basic error checking on them, and pass the compiled listings on to the State CACFP agencies. It is estimated that the average NSLP State agency burden associated with this work will be 2.5 hours.

Comparison of Costs and Benefits

The analysis presented here finds that the DCH tiering structure established by P.L. 104–193 and promulgated by this interim rule will accomplish its objective of targeting Federal child care benefits to low-income children. This targeting will save a projected $2.2 billion in Federal tax revenues over the next 6 years (fiscal years 1997–2002). Non-low-income providers (tier II DCHs providers) and non-low-income families with children in tier II DCHs will bear most of the costs resulting from the Federal government's $2.2 billion savings. Low-income families with children in tier II DCHs may also bear some costs, but States may offset this by opting to increase child care subsidies. The analysis further found that while targeting will place new administrative burdens on sponsors, State CACFP and NSLP agencies, and NSLP school food authorities, these burdens are relatively modest.

5. Requirements for Regulatory Analyses Established by Regulatory Flexibility Act

The Regulatory Flexibility Act (P.L. 96–354) establishes requirements for analyses of regulatory actions that are expected to have a significant economic impact on a substantial number of small entities. P.L. 96–354 was enacted at the urging of small businesses after repeated claims that uniform application of regulations regardless of business size was disproportionately damaging to small entities. It is expected that this rule will have an economically significant impact on tier II DCH providers due to the large decrease in reimbursement rates for meals served in those DCHs. This rule will also affect sponsoring organizations, considered to be ''small organizations'' by P.L. 96–354, although the economic impact on them is expected to be minimal. The specific effects for sponsors and tier II providers were discussed under the Costs to Providers and Costs to Sponsors sections of the Cost/Benefit Assessment.

The Act also requires that analyses estimate the type of professional skills necessary to reporting or record keeping requirements. The new reporting and record keeping required by this rule require no skills beyond those necessary for current program reporting and record keeping requirements.

Another P.L. 96–354 requirement is that analyses describe the steps taken by the promulgating agency (Food and Consumer Service, FCS) to minimize the economic impact on small entities. Specifically, the ''analysis shall also contain a description of any significant alternatives to the interim rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.'' There are no significant alternatives available to FCS that both (1) accomplish the stated objectives of P.L. 104–193 AND (2) minimize any significant economic impact on small entities.

The interim rule implements, in accordance with statute and with the statutory intent to target benefits, the programmatic changes mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193). The rule's only economically significant impacts are the decreased meal reimbursements for meals served in tier II DCHs; FCS cannot mitigate this effect other than by making targeting less accurate, which would be contrary to the spirit of P.L. 104–193. The only other class of small entities affected by this regulatory action are sponsors. The analysis finds that the costs that sponsors will incur in meeting the new program requirements established by this interim rule will be less than one percent of the payments each sponsor receives from USDA for operating the CACFP in its DCHs. The small size of this burden implies that this interim rule's economic impact on sponsors is minimal and that in the few areas where FCS had discretion, it made choices free from deleterious economic effects for sponsors. For example, FCS considered several alternatives for how often sponsors using simplified meal counting systems must re-determine the claiming percentage or blended reimbursement rate for each of their mixed DCHs using the income-status of currently enrolled children. P.L. 104–193 required that these re-determinations be made at least annually. FCS considered annual, semi-annual, and quarterly re-determinations and chose, for the interim rule, to require semi-annual re-determinations, having decided semi-annual represents the best compromise between effective targeting of benefits and limiting sponsor burden. The interim rule places no reporting requirements on homes or sponsors beyond those mandated by P.L. 104–193.

FCS is soliciting comments on the less-economically significant, burden related provisions of this rule and will consider all received comments when crafting the final rule and when revising the burden estimates for the final economic impact analysis.

6. References

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Approved:

This analysis is consistent with the possibility that a limited number of non-low-income children will be in tier I DCHs, and that a similar limited number of low-income children will be in non-mixed tier II DCHs.

Dated: December 5, 1996.

William E. Ludwig,

Administrator, Food and Consumer Services.

Dated: December 20, 1996.

Stephen B. Dewhurst,

Director, Office of Budget and Program Analysis.

Dated: December 20, 1996.

Keith Collins,

Chief Economist.

Dated: December 23, 1996.

Dan Dager,

Acting Executive Assistant to the Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 97–116 Filed 1–6–97; 8:45 am]

BILLING CODE 3410–30–P

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV–96–929–2FR]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Change in Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the reporting requirements currently prescribed under the cranberry marketing order. The marketing order regulates the handling of cranberries grown in 10 States and is administered locally by the Cranberry Marketing Committee (committee). This rule allows the committee to collect receipt and inventory information from handlers on a different species of cranberries. This rule will provide more accurate information to the cranberry industry to be used in making marketing decisions.

EFFECTIVE DATE: This final rule becomes effective February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kathleen M. Finn, Marketing Specialists, Marketing Order Administration Branch, F&V, AMS, USDA, room 2530–S, P.O. Box 96456, Washington, DC 20090–6456: telephone: (202) 720–1509, Fax #(202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax #(202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 929 (7 CFR part 929), as amended, regulating the handling of cranberries grown in 10 States, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of cranberries who are subject to regulation under the marketing order and approximately 1,400 producers of cranberries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of cranberries may be classified as small entities.

Handlers are already required to complete a form four times a year reporting all regulated cranberries on hand for a specified period, all cranberries acquired and sold, and the new balance of cranberries on hand. This rule authorizes adding data to this form requiring information on a new variety of cranberries not regulated under the order. The form has an estimated burden time of two hours. No additional burden time will be added to this form to acquire this information. In addition, because the industry relies on the comprehensive information provided by the committee, it is critical that the committee obtain accurate information. This information will be used in making marketing decisions and the additional burden on handlers, if any, will not be significant.

Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule changes the reporting requirements currently prescribed under the cranberry marketing order. This rule allows the committee to collect receipt and inventory information from handlers on a different species of cranberries. This rule will provide more accurate information to the cranberry industry to be used in making marketing decisions. The committee unanimously recommended the above change.

The request for this information will be incorporated on the handler inventory report, a form already used by the committee. The request of this information should not constitute a significant burden on a business unit, large or small. Currently, the estimated reporting burden per response for the handler inventory report is two hours. The burden time will not change with the additional data request.

Section 929.62(e) of the cranberry marketing order provides authority to require handlers to furnish to the committee information with respect to acquisitions and dispositions of cranberries. This section also provides authority to require handlers to file reports to the committee as to the quantity of cranberries handled by such handler during any designated period.

Under the marketing order, cranberries are defined as all varieties of the fruit *Vaccinium macrocarpon* grown in the production area. In 1995, the cranberry industry experienced a short crop coupled with increased demand. To replace the shortage of *Vaccinium macrocarpon*, handlers have supplemented their inventories with *Vaccinium oxycoccus* which is a European species of cranberry, recognized by the Food and Drug Administration as a cranberry. Because of the increase in volume of this species of cranberry, it is important to the cranberry industry to know the amount of *Vaccinium oxycoccus* that is being acquired and utilized by handlers.

The order authorizes the committee to recommend limiting the quantities of cranberries which may be handled during any fiscal period. The Secretary would establish a volume regulation based on information received from the committee if the Secretary found that such regulation would effectuate the declared policy of the Act. The committee is considered by the industry as the source for comprehensive cranberry related data, primarily data relating to production, supplies, utilization and inventories. Therefore, it is critical to the committee to receive comprehensive information on cranberries.

The committee will be able to use this information on *Vaccinium oxycoccus* when considering its decisions to implement volume regulation within the industry. Since this species is not regulated under the order, the committee needs to know the quantities and which handlers have acquired *Vaccinium oxycoccus* in order to keep the data on the non-regulated species separate and apart from the data on the regulated species, *Vaccinium macrocarpon*.

Therefore, the committee recommended that section 929.105 be revised by adding a new subparagraph (c) that requires that handlers also report on the same form as currently filed with the committee, the total quantity of *Vaccinium oxycoccus* cranberries the handler acquired and the disposition of such cranberries. Also, the handler are required to report the respective quantities of *Vaccinium oxycoccus* cranberries and cranberry products held by the handler.

The committee and its staff are responsible for keeping information on individual handlers' inventories and receipt confidential. Information gathered by the committee, including information relating to supplies of this non-regulated species of cranberries, will only be reported in the aggregate, along with other pertinent cranberry data.

The proposed rule concerning this action was published in the August 21, 1996, Federal Register (61 FR 43186), with a 30-day comment period ending September 20, 1996. No comments were received. The proposed rule also announced AMS's intention to request a revision to the currently approved information collection requirements issued under the marketing order. The information collection requirements contained in the referenced sections have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0581–0103.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

§ 929.105 [Amended]

2. In § 929.105, paragraphs (b) (1) and (2) are amended by adding the words ''and *Vaccinium oxycoccus* cranberries'' after the word ''cranberries'' everywhere they appear and paragraph (b)(2) is amended by adding the words ''and *Vaccinium oxycoccus* cranberry products'' after the words ''cranberry products''.

Dated: December 31, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–276 Filed 1–6– 97; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 959

[Docket No. FV96–959–1 IFR]

Onions Grown in South Texas; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the South Texas Onion Committee (Committee) under Marketing Order No. 959 for the 1996–97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of onions grown in South Texas. Authorization to assess Texas onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on August 1, 1996. Comments received by February 6, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Marketing Specialist, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210–682–2833, FAX 210–682–5942, or Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090- 6456, telephone 202–720–9918; FAX 202–720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090-6456; telephone 202–720–2491; FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South

Texas, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas onion handlers are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning August 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. The Act provides that the District court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory action to the scale of businesses subject to such action in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 48 producers of South Texas onions in the production area and approximately 36 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of South Texas onion producers and handlers may be classified as small entities.

Texas onion producers and handlers may be classified as small entities.

The Texas onion marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee, in a telephone vote, unanimously recommended 1996–97 administrative expenses of $100,000 for personnel, office, and the travel portion of the compliance budget. These expenses were approved in October 1996. The assessment rate and funding for research and promotion projects, and the road guard station maintenance portion of the compliance budget were to be recommended at a later Committee meeting.

The Committee subsequently met on November 19, 1996, and unanimously recommended 1996–97 expenditures of $448,000 and an assessment rate of $0.07 per 50-pound container or equivalent of onions. In comparison, last year's budgeted expenditures were $585,250. The assessment rate of $0.07 is $0.03 lower than last year's established rate. Major expenditures recommended by the Committee for the 1996–97 fiscal period include $80,000 for personnel and administrative expenses, $120,000 for compliance, $150,000 for promotion, and $98,000 for onion breeding research. Budgeted expenses for these items in 1995–96 were $96,250, $144,000, $246,000, and $99,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Onion shipments for the year are estimated at 5 million 50-pound equivalents, which should provide $350,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further, rulemaking will be undertaken as necessary. The Committee's 1996–97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to

have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period began on August 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new subpart titled ''Assessment Rates'' consisting of a new § 959.237 and a new subpart heading titled ''Handling Regulations'' are added immediately preceding § 959.322, to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 959.237 Assessment rate.

On and after August 1, 1996, an assessment rate of $0.07 per 50-pound container or equivalent is established for South Texas onions.

Subpart—Handling Regulations

* * * * *

Dated: December 31, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–282 Filed 1–6– 97; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Parts 1011 and 1046

[Docket No. DA–96–15]

Milk in the Tennessee Valley and Louisville-Lexington-Evansville Marketing Area

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule, correction.

SUMMARY: The Agricultural Marketing Service is correcting FR Doc. 96–33000, published December 31, 1996, pertaining to the termination of base-excess payment plan provisions contained in five Federal milk marketing orders.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: The final rule that is the subject of this correction inadvertently omitted regulatory language terminating the base-excess payment plan provisions of five Federal milk marketing orders.

Need for Correction

As published, the final rule contains errors in amendatory instructions 24 and 32 which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, amendatory instructions 24 and 32, respectively, as published on December 31, 1996 (61 FR 69018), are corrected as follows:

§ 1011.61 [Corrected]

24. In § 1011.61, paragraph (a) introductory text is amended by removing the words ''of July through February'', paragraph (a)(6) is amended by removing the words ''for the months of July through February'', paragraph (b) is removed, and the section heading is revised as follows:

§ 1046.61 [Corrected]

32. In § 1046.61, paragraph (a) introductory text is amended by removing the words ''of July through February'', paragraph (a)(6) is amended by removing the words ''for the months of July through February'', paragraph (b) is removed, and the section heading is revised to read as follows:

Dated: December 30, 1996.

Richard M. McKee,

Director, Dairy Division.

[FR Doc. 97–280 Filed 1–6–97; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1079

[DA–96–16]

Milk in the Iowa Marketing Area; Temporary Revision of Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document revises certain provisions of the Iowa Federal milk marketing order for the months of December 1996 through March 1997. This action decreases the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order. The applicable percentage will be decreased 10 percentage points, from 30 percent to 20 percent, for the months of December 1996 through March 1997. The revision is being made in response to a request by a pool supply plant that is regulated under the Iowa order. This action is necessary to prevent the uneconomic shipment of milk.

EFFECTIVE DATES: Amendment 1 is effective January 8, 1997. Amendment 2 is effective December 1, 1996, through March 31, 1997.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932, e-mail address Nicholas__X__Memoli@usda.gov.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Temporary Revision: Issued December 6, 1996; published December 12, 1996 (61 FR 65366).

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (the ''Act''), as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to

review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as amended, the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The revised supply plant shipping percentages are incorporated into the order to prevent the uneconomic shipment of milk. This action will decrease the percentage of milk receipts that handlers are required to move to fluid milk distributing plants. With a decrease in the shipping percentage, supply plant operators will not have to move milk uneconomically to pool distributing plants to keep the milk received at their plants priced under the order.

The reduction of the required supply plant shipping percentage for the months of December 1996 through March 1997 would allow the milk of producers traditionally associated with the Iowa market to continue to be pooled and priced under the order. The revision would lessen the likelihood that more milk shipments to pool plants might be required under the order than are actually needed to supply the fluid milk needs of the market and would result in savings in hauling costs for handlers and producers.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the provisions of § 1079.7(b)(1) of the Iowa order.

Issuance of Notice of Proposed Revision

Notice of proposed rulemaking was issued concerning a proposed reduction in the percentage of a supply plant's receipts which must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa order. The revisions were proposed to be effective for the months of December 1, 1996, through March 31, 1997. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by December 19, 1996.

Two comments were received. One comment supported the recommended reduction, while the other comment supported a reduction with modification.

Statement of Consideration

After consideration of all relevant material, including the proposed set forth in the aforesaid notice, and other available information, it is hereby found and determined that the supply plant shipping percentage set forth in § 1079.7(b) of the Iowa Federal milk order should be decreased 10 percentage points, from 30 percent to 20 percent, for the months of December 1996 through March 1997.

Beatrice Cheese, Inc., a supply plant regulated under the Iowa order, proposed decreasing the supply plant shipping percentage by 10 percentage points, from 35 percent of plant receipts to 25 percent of such receipts, for the month of November 1996, and from 30 percent to 20 percent for the months of December 1996 through March 1997. The proponent contends that the decrease is necessary to prevent the uneconomic shipment of milk.

According to Beatrice, the Department's October 23, 1996, decision increasing the shipping percentage requirements to 35 percent for the months of September through November beginning with October 1996, and to 30 percent for the months of December through March has caused unjust financial losses and the uneconomic shipment of milk to occur. In order to comply with Federal order requirements, Beatrice states that a significant amount of milk was unable to be pooled to the detriment of Iowa's dairy farmers. Additionally, proponent claims that market conditions have changed drastically in Iowa since October 1996 due to a drop in the cheese and butter markets which has made more than enough milk available for fluid use eliminating the need for increased shipping percentages.

While Beatrice's proposal included a temporary revision of the supply plant shipping percentage requirements for November 1996, the proposed revision issued December 6, 1996, requesting comments limited the revision period to December 1996 through March 1997. The inclusion of November 1996 was impractical and infeasible given the amount of time necessary for required procedures, including a comment period.

Wapsie Valley Creamery, a supply plant regulated under Order 79, submitted a comment in support of a reduction in the supply plant shipping requirement by 10 percentage points for the months of December 1996 through March 1997. Wapsie states that milk marketing conditions have changed since October 1996, and that due to the increased shipping requirements recently put into effect, it has been forced to make uneconomic shipments of milk to meet order regulations.

Anderson Erickson Dairy Co. (A–E), a proprietary distributing plant regulated under the Iowa order, submitted a comment supporting a reduction in the supply plant shipping percentage requirements for the Iowa order, but argues that the decrease should be limited to 5 percentage points, from 30 percent to 25 percent, for the months of December 1996 through March 1997. A–E contends that, given past experiences which have caused A–E to request increased shipping percentages due to a lack of available milk supplies for the fluid market, the percentage should be reduced only 5 percentage points from the current level. A–E also states that under no circumstances should the shipping requirements for September through December of future years be reduced.

At the time of A–E's previous request to have the shipping percentages increased, the Department had found that in the Iowa marketing area the percentage of pooled milk used in Class I had noticeably increased for the months of June through August 1996 as compared to earlier years. This situation indicated the need for shipping percentage increases in order to attract an adequate supply of milk for fluid use. However, Class I utilization for the month of October 1996 in the Iowa marketing area illustrates that there is no need to maintain the shipping percentages at the current level of 30 percent. The Class I utilization for the months of October and November 1996

(33.8% and 32.7%, respectively) has decreased as compared to October and November 1995 (49.6% and 36.1%, respectively). A decrease in Class I utilization is also apparent for the January through March 1996 period as compared to the same months of 1995. Class I utilization declined from 34.7 percent for January 1995 to 32.1 percent in January 1996, 35.7 percent to 33.1 percent for the month of February, and from 34.2 percent to 31.7 percent for March of such years. This suggests that sufficient supplies of milk for fluid use should be available during the months of December 1996 through March 1997 for Iowa order distributing plants. Therefore, a decrease in the shipping requirement is warranted. By reducing the shipping requirement percentage for the December 1996 through March 1997 period to 20 percent, a reasonable balance will be reached which will prevent uneconomic shipments from occurring, as well as assure a sufficient milk supply.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of December 1996 through March 1997;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision.

Therefore, good cause exists for making this temporary revision effective less than 30 days from the days from the date of issuance.

List of Subject in 7 CFR Part 1079

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Part 1079 is amended as follows:

PART 1079—MILK IN THE IOWA MARKETING AREA

1. The authority for 7 CFR Part 1079 continues to read as follows:

Authority: 7 U.S.C. 601-674.

§ 1079.7 [Amended]

2. In § 1079.7(b), the introductory text is amended by revising the words ''30 percent'' to read ''20 percent'' effective December 1, 1996, through March 31, 1997.

Dated: December 31, 1996.

Richard M. McKee,

Director, Dairy Division.

[FR Doc. 97–278 Filed 1–6–97; 8:45 am]

BILLING CODE 3410–02–P

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1314

Book-Entry Procedures for TVA Power Securities Issued Through the Federal Reserve Banks

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: This final rule revises the procedures governing the issuance of, and transactions in, all TVA Power Securities issued in book-entry form through the Federal Reserve Banks. These revisions incorporate recent changes in commercial and property law and bring TVA's book-entry procedures into accord with the revised book-entry procedures of the United States Department of Treasury.

EFFECTIVE DATE: January 7, 1997.

FOR FURTHER INFORMATION CONTACT: Edward S. Christenbury at (423) 632–2241.

SUPPLEMENTARY INFORMATION: TVA, a wholly owned corporate agency and instrumentality of the United States, is authorized to issue bonds, notes, and other evidences of indebtedness to assist its power program. Many TVA Power Securities are available exclusively in book-entry form and are thus subject to TVA's book-entry procedures. This final rule revises TVA's book-entry procedures to incorporate recent changes in commercial and property law and to bring them into accord with the revised book-entry procedures of the United States Department of Treasury published in the Federal Register on August 23, 1996 (61 FR 43,626).

Because the revised Treasury Regulations become effective on January 1, 1997, it is in the public interest that this final rule become effective as close to this date as possible to facilitate TVA's performance of its responsibilities under Section 15d and other sections of the TVA Act, 16 U.S.C. 831–831dd. The notice, public comment, and delayed effective date are therefore contrary to the public interest and inapplicable to this final rule.

List of Subjects in 18 CFR Part 1314

Accounting, Bonds, Brokers, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, part 1314 of chapter XIII of title 18 of the Code of Federal Regulations is revised to read as follows:

PART 1314—BOOK-ENTRY PROCEDURES FOR TVA POWER SECURITIES ISSUED THROUGH THE FEDERAL RESERVE BANKS

Sec.

Authority: 16 U.S.C. 831–831dd.

§ 1314.1 Applicability and effect.

(a) *Applicability.* The regulations in this part govern the issuance of, and transactions in, all TVA Power Securities issued by TVA in book-entry form through the Reserve Banks.

(b) *Effect.* The TVA Power Securities to which the regulations in this part apply are obligations which, by the terms of their issue, are available exclusively in book-entry form through the Reserve Banks' Book-entry System.

§ 1314.2 Definition of terms.

Unless the context requires otherwise, terms used in this part 1314 that are not defined in this section have the meanings as set forth in 31 CFR 357.2. Definitions and terms used in 31 CFR part 357 should be read as though modified to effectuate their application to Book-entry TVA Power Securities where applicable.

Book-entry System means the automated book-entry system operated by the Reserve Banks acting as the fiscal agent for TVA on which Book-entry TVA Power Securities are issued, recorded, transferred, and maintained in book-entry form.

(b) *Book-entry TVA Power Security* means any TVA Power Security issued or maintained in the Book-entry System of the Reserve Banks.

(c) *CUSIP Number* is a unique identification for each security issue established by the Committee on Uniform Security Identification Procedures.

(d) *Depository Institution* means any Participant.

(e) *Entitlement Holder* means a Person to whose account an interest in a Book-

entry TVA Power Security is credited on the records of a Securities Intermediary.

(f) *Funds Account* means a reserve and/or clearing account at a Reserve Bank to which debits or credits are posted for transfers against payment, book-entry securities transaction fees, or principal and interest payments.

(g) *Other TVA Power Evidences of Indebtness* means any TVA Power Security issued under section 2.5 of the TVA Basic Bond Resolution (see paragraph (r) of this section).

(h) *Participant* (also called ''holder'' in the TVA Basic Bond Resolution) means a Person that maintains a Participant's Security Account with a Reserve Bank.

(i) *Participant's Security Account* means an account in the name of a Participant at a Reserve Bank to which Book-entry Securities held for a Participant are or may be credited.

(j) *Person* means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include the United States or a Reserve Bank.

(k) *Reserve Banks* means the Federal Reserve Banks of the Federal Reserve System and their branches.

(l) *Reserve Bank Operating Circular* means the publication issued by each Reserve Bank that sets forth the terms and conditions under which the Reserve Bank maintains book-entry securities accounts and transfers book-entry securities.

(m) *Securities Documentation* means the applicable documents establishing the terms of a Book-entry TVA Power Security.

(n) *Securities Intermediary* means:

(1) A Person that is registered as a ''clearing agency'' under the Federal securities law; a Reserve Bank; any other Person that provides clearance or settlement services with respect to a Book-entry TVA Power Security that would require it to register as a clearing agency under the Federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a Federal or State governmental authority; or

(2) A Person (other than an individual, unless such individual is registered as a broker or dealer under the Federal securities laws), including a bank or broker, that in the ordinary course of business maintains securities accounts for others and is acting in that capacity.

(o) *Security Entitlement* means the rights and property interests of an Entitlement Holder with respect to a Book-entry TVA Power Security.

(p) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(q) *TVA* means the Tennessee Valley Authority, a wholly owned corporate agency and instrumentality of the United States of America created and existing under the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831–831dd).

(r) *TVA Basic Bond Resolution* means the Basic Tennessee Valley Authority Power Bond Resolution [1] adopted by the TVA Board of Directors on October 6, 1960, as heretofore and hereafter amended.

(s) *TVA Power Bond* means any TVA Power Security issued by TVA under section 2.2 of the TVA Basic Bond Resolution and the supplemental resolution adopted by the TVA Board of Directors authorizing the issuance thereof.

(t) *TVA Power Bond Anticipation Obligation* means any TVA Power Security issued under section 2.3 of the TVA Basic Bond Resolution.

(u) *TVA Power Note* means any Other TVA Power Evidences of Indebtedness in the form of a note having a maturity at the date of issue of less than one year.

(v) *TVA Power Security* means a TVA Power Bond, TVA Power Bond Anticipation Obligation, TVA Power Note, or Other TVA Power Evidence of Indebtedness issued by TVA under section 15d of the TVA Act, as amended, and the TVA Basic Bond Resolution.

§ 1314.3 Authority of Reserve Banks.

(a) Each Reserve Bank is hereby authorized as fiscal agent of TVA to perform the following functions with respect to the issuance of Book-entry TVA Power Securities offered and sold by TVA to which this part 1314 applies, in accordance with the Securities Documentation, Reserve Bank Operating Circulars, this part 1314, and procedures established by the Secretary of the United States Treasury consistent with these authorities:

(1) To service and maintain Book-entry TVA Power Securities in accounts established for such purposes;

(2) To make payments with respect to such securities, as directed by TVA;

(3) To effect transfer of Book-entry TVA Power Securities between Participants' Securities Accounts as directed by the Participants;

(4) To perform such other duties as fiscal agent as may be requested by TVA.

(b) Each Reserve Bank may issue Reserve Bank Operating Circulars not inconsistent with this part 1314, governing the details of its handling of Book-entry TVA Power Securities, Security Entitlements, and the operation of the Book-entry System under this part 1314.

§ 1314.4 Law governing the rights and obligations of TVA and Reserve Banks; law governing the rights of any Person against TVA and Reserve Banks; law governing other interests.

(a) Except as provided in paragraph (b) of this section, the following rights and obligations are governed solely by the book-entry regulations contained in this part 1314, the Securities Documentation (but not including any choice of law provisions in such documentation), and Reserve Bank Operating Circulars;

(1) The rights and obligations of TVA and Reserve Banks with respect to:

(i) A book-entry TVA Power Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to TVA Power Securities; and

(2) The rights of any Person, including a Participant, against TVA and Reserve Banks with respect to:

(i) A Book-entry TVA Power Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to TVA Power Securities.

(b) A security interest in a Security Entitlement that is in favor of a Reserve Bank from a Participant and that is not recorded on the books of a Reserve Bank pursuant to § 1314.5(c) is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Reserve Bank maintaining the Participant's securities account is located. A security interest in a Security Entitlement that is in favor of a Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Reserve Bank pursuant to § 1314.5(c), is governed by the law determined in the manner specified in paragraph (d) of this section.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law specified in paragraph (b) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State.

(d) To the extent not otherwise inconsistent with this part 1314, and

[1] A copy of the TVA Basic Bond Resolution may be obtained upon request directed to TVA, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499, Attn.: Treasurer.

notwithstanding any provision in the Security Documentation setting forth a choice of law, the provisions set forth in 31 CFR 357.11 regarding law governing other interests apply and should be read as though modified to effectuate the application of 31 CFR 357.11 to Book-entry TVA Power Securities.

§ 1314.5 Creation of Participant's Security Entitlement; security interests.

(a) A Participant's Security Entitlement is created when a Reserve Bank indicates by book-entry that a Book-entry TVA Power Security has been credited to a Participant's security account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including without limitation deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation or agreement, and that is marked on the books of a Reserve Bank, is thereby effected and perfected, and has priority over any other interest in the securities. Where a security interest in favor of the United States in a Security Entitlement of a participant is marked on the books of a Reserve bank, such Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the security. For purposes of this paragraph, an ''authorized representative of the United States'' is the official designated in the applicable regulations or agreement to which a Reserve Bank is a party governing the security interest.

(c) TVA and Reserve Banks have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in favor of any Person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Reserve Bank or in a Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Reserve Bank or a Person may be created and perfected by a Reserve Bank marking its books to record the security interest. Subject to paragraph (b) of this section with respect to a security interest in favor of the United States, a security interest in a Security Entitlement marked on the books of a Reserve Bank shall have priority over any other interest in the securities.

(d) In addition to the method provided in paragraph (c) of this section, a security interest, including a security interest in favor of a Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in § 1314.4(b) or (d). The perfection, effect of perfection or non-perfection, and priority of a security interest are governed by such applicable law. A security interest in favor of a Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under such law, including with respect to the effect of perfection and priority of such security interest. A Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

§ 1314.6 Obligations of TVA.

(a) Except in the case of a security interest in favor of the United States or a Reserve Bank or otherwise as provided in § 1314.5(c), for the purposes of this part 1314, TVA and Reserve Banks shall treat the Participant to whose securities account an interest in a Book-entry TVA Power Security has been credited as the Person exclusively entitled to issue a transfer message, to receive interest and other payments with respect thereof, and otherwise to exercise all the rights and powers with respect to such security, notwithstanding any information or notice to the contrary. Neither TVA nor the Reserve Banks are liable to a Person asserting or having an adverse claim to a Security Entitlement or to a Book-entry TVA Power Security in a Participant's security account, including any such claim arising as a result of the transfer or disposition of a Book-entry TVA Power Security by a Reserve Bank pursuant to a transfer message that the Reserve Bank reasonably believes to be genuine.

(b) The obligation of TVA to make payments with respect to Book-entry TVA Power Securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest or other payments on Book-entry TVA Power Securities are either credited by a Reserve Bank to a Funds Account maintained at such bank or otherwise paid as directed by the Participant.

(2) Book-entry TVA Power Securities are redeemed in accordance with their terms by a Reserve Bank withdrawing the securities from the Participant's security account in which they are maintained and by either crediting the amount of the redemption proceeds, including both principal and interest, where applicable, to a Funds Account at such bank or otherwise paying such principal and interest as directed by the Participant. No action by the Participant ordinarily is required in connection with the redemption of a Book-entry TVA Power Security.

§ 1314.7 Liability of TVA and Reserve Banks.

TVA and the Reserve Banks may rely on the information provided in a transfer message and are not required to verify the information. TVA and the Reserve Bank shall not be liable for any action taken in accordance with the information set out in a transfer message or evidence submitted in support thereof.

§ 1314.8 Identification of accounts.

Book-entry accounts may be established in such form or forms as customarily permitted by the entity (e.g., Depository Institution, Securities Intermediary, etc.) maintaining them, except that each account established by such entity (other than a Reserve Bank) should include data to permit both customer identification by name, address, and taxpayer identifying number, as well as a determination of the Book-entry TVA Power Securities being held in such account by amount, maturity, date, and CUSIP number, and of transactions relating thereto.

§ 1314.9 Waiver of regulations.

TVA reserves the right in TVA's discretion to waive any provision of the regulations in this part in any case or class of cases for the convenience of TVA or in order to relieve any Person of unnecessary hardship, if such action is not inconsistent with law and does not adversely affect any substantial existing rights, and TVA is satisfied that such action will not subject TVA to any substantial expense or liability.

§ 1314.10 Additional provisions.

(a) *Additional requirements.* In any case or any class of cases arising under the regulations in this part, TVA may require such additional evidence and a bond of indemnity, with or without surety, as may in the judgment of TVA be necessary for the protection of the interests of TVA.

(b) *Notice of attachment for TVA Power Securities in Book-entry System.* The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. The

regulations in this part do not purport to establish whether a Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

Dated: December 31, 1996.

John L. Dugger,

Assistant General Counsel.

[FR Doc. 97–228 Filed 1–6–97; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Office of the Commissioner

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the delegations of authority regulations that cover general redelegations of authority from the Commissioner of Food and Drugs to other officers of FDA. The amendment delegates the FDA Deputy User Fee Waiver Officer authority to consider and decide requests under certain circumstances for waivers or reductions of user fees. Redelegation of this authority would allow for more efficient operations.

EFFECTIVE DATE: Janaury 7, 1997.

FOR FURTHER INFORMATION CONTACT:

Suzanne M. O'Shea, Office of the Chief Mediator and Ombudsman (HF–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3390, or

Donna G. Page, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4816.

SUPPLEMENTARY INFORMATION: FDA is amending the delegations of authority under § 5.20 *General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration* (21 CFR 5.20) by revising § 5.20(h) to add the title of Deputy User Fee Waiver Officer to those authorized to perform all of the functions of the Commissioner under the Prescription Drug User Fee Act of 1992 (21 U.S.C. 379h(d)), as amended hereafter, relating to the authority to waive or reduce user fees. The Chief Mediator and Ombudsman and the Deputy Chief Mediator and Ombudsman currently have this authority. This action is being taken in order to redelegate authority to the Deputy User Fee Waiver Officer, which will provide a more efficient process for considering and making decisions on requests for waivers or reduction of user fees.

Further redelegation of this authority is not authorized at this time. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 is revised to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

2. Section 5.20 is amended by revising paragraph (h) to read as follows:

§ 5.20 General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration.

* * * * *

(h) The Chief Mediator and Ombudsman is designated as User Fee Waiver Officer and is authorized to perform all of the functions of the Commissioner under the Prescription Drug User Fee Act of 1992 (21 U.S.C. 379h(d)), as amended hereafter, relating to the authority to waive or reduce user fees. The User Fee Waiver Officer's authority may be redelegated to the Deputy Chief Mediator and Ombudsman and to the Deputy User Fee Waiver Officer, without further redelegation. The Deputy Commissioner for Operations is designated User Fee Appeals Officer and is authorized to hear and decide user fee waiver appeals. The decision of the User Fee Appeals Officer will constitute final agency action on such matters.

* * * * *

Dated: December 31, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–290 Filed 1–6–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8708]

RIN 1545–AL98

Computation of Foreign Taxes Deemed Paid Under Section 902 Pursuant to a Pooling Mechanism for Undistributed Earnings and Foreign Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final income tax regulations relating to the computation of foreign taxes deemed paid under section 902. Changes to the applicable law were made by the Tax Reform Act of 1986 and by the Technical and Miscellaneous Revenue Act of 1988 (TAMRA). These regulations provide guidance needed to comply with these changes and affect foreign corporations and their United States corporate shareholders.

DATES: These regulations are effective January 7, 1997.

Applicability: For the specific dates of applicability of these regulations, see §§ 1.902–1(g) and 1.902–3(l).

FOR FURTHER INFORMATION CONTACT: Caren S. Shein (202) 622–3850 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 15451458. Responses to these collections of information are required by the IRS to implement the section 902 pooling regime enacted in the Tax Reform Act of 1986.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The burden for the collection of information is reflected in the burden for Form 1118.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to the collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 902 (26 CFR part 1) was amended by section 1202(a) of the Tax Reform Act of 1986 (Public Law 99–514, 100 Stat. 1085), and section 1012(b) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) (Public Law 100–647, 102 Stat. 3242). On January 6, 1995, the IRS published a notice of proposed rulemaking in the Federal Register (60 FR 2049 [INTL–933–86 (1995–1 C.B. 959)]). The proposed regulations provide guidance needed to comply with section 902 as amended in 1986 and 1988. No public hearing was requested or held, but numerous written comments were received. The proposed regulations, with certain changes made in response to comments, are adopted in this Treasury decision as final regulations. The principal changes to the regulations, as well as the major comments and suggestions, are discussed below.

Explanation of Provisions

Section 1.902–1

In the preamble to the proposed regulations, the IRS requested comments on whether the holding of Revenue Ruling 71–141 (1971–1 C.B. 211) should be expanded to allow taxes paid by a foreign corporation to be considered deemed paid by domestic corporations that are partners in domestic limited partnerships or foreign partnerships, shareholders in limited liability companies, beneficiaries of domestic or foreign trusts and estates, or interest holders in other pass-through entities. The revenue ruling held that two 50-percent domestic corporate general partners of a domestic general partnership that owned 40 percent of a foreign corporation were entitled to compute an amount of foreign taxes deemed paid under section 902 with respect to dividends they received from the foreign corporation through the partnership.

The IRS received numerous comments in response to the request in the preamble. The commenters uniformly argue that the aggregate theory of partnerships should apply to allow domestic corporate partners to compute an amount of foreign taxes deemed paid with respect to dividends paid to any partnership by a foreign corporation, provided that the partner owns at least 10 percent of the voting stock of the foreign corporation through the partnership.

The final regulations do not resolve under what circumstances a domestic corporate partner may compute an amount of foreign taxes deemed paid with respect to dividends received from a foreign corporation by a partnership or other pass-through entity. That issue will be the subject of a future proposed regulations project. However, in recognition of the holding in Revenue Ruling 71–141 (1971–1 C.B. 211) that a general partner of a domestic general partnership may compute an amount of foreign taxes deemed paid with respect to a dividend distribution from a foreign corporation to the partnership, § 1.902–1(a)(1) is amended to define a domestic shareholder as a domestic corporation that ''owns'' the requisite voting stock in a foreign corporation rather than one that ''owns directly'' the voting stock. The IRS is still considering under what other circumstances the revenue ruling should apply.

Section 1.902–1(a)(8) is amended to clarify under what circumstances the pool of post-1986 foreign income taxes must be reduced to account for distributions made in prior post-1986 taxable years. The regulations require a reduction in the taxes pool for taxes attributable to earnings distributed to shareholders ineligible for the deemed paid credit (for example, a foreign shareholder, a U.S. individual shareholder, or a domestic corporate shareholder that owns less than 10 percent of the foreign corporation's voting stock) and to shareholders that are eligible for the credit but that choose to deduct foreign taxes under section 164(a) in the year of the distribution rather than claim a credit.

The IRS understands that some taxpayers have taken the position, contrary to the position taken in § 1.902–1(a)(8) of the proposed regulations, that although post-1986 undistributed earnings must be reduced to account for all distributions out of current or accumulated earnings and profits, post-1986 foreign income taxes should be reduced only to account for taxes attributable to distributions with respect to which a shareholder both is eligible to claim a credit for foreign taxes deemed paid under section 902(a) and in fact elects to credit foreign taxes for the taxable year under section 901(a). These taxpayers argue that only in those circumstances are foreign taxes ''deemed paid'' and thus required to be removed from the taxes pool under a literal reading of sections 902(a) and 902(c)(2)(B).

The IRS has not changed its position as reflected in § 1.902–1(a)(8)(i) of the proposed regulations that the foreign taxes pool must be reduced to account for foreign taxes attributable to all distributions and deemed distributions or inclusions to all shareholders. However, the text of the final regulations has been amended to clarify the rule. The requirement that the foreign taxes pool must be reduced proportionately as the earnings pool is reduced is consistent with the legislative history of the Tax Reform Act of 1986 (Public Law 99–514). The House Report states that under the pooling regime, ''[a] dividend or subpart F inclusion is considered to bring with it a pro rata share of the accumulated foreign taxes paid by the subsidiary.'' H.R. Rep. No. 426, 99th Cong., 1st Sess. 357 (1985). In addition, removing taxes attributable to distributions to ineligible shareholders and eligible shareholders that choose to deduct foreign taxes is supported by the general matching principles of section 902, which presume that a dividend distribution will carry with it a ratable share of the foreign corporation's taxes. If taxes paid with respect to distributed earnings remained in the pool, eligible shareholders eventually could receive credits for more than their ratable share of the foreign corporation's taxes, a result at odds with the statutory scheme.

Section 1.902–1(a)(8)(i) is amended to correct an oversight in the proposed regulation. In the case of a distribution out of current earnings and profits that is treated as a ''nimble'' dividend under section 316(a)(2) when there is a deficit in accumulated earnings and profits, post-1986 foreign income taxes are not reduced. This rule is not inconsistent with the general rule of paragraph (a)(8)(i) that the foreign taxes pool must be reduced to account for taxes attributable to all distributions and deemed distributions out of post-1986 undistributed earnings. Rather, it reflects the fact that under section 902 and these regulations, no taxes are deemed paid with respect to a nimble

dividend under section 316(a)(2) because the post-1986 undistributed earnings pool is zero or less than zero.

Section 1.902–1(a)(9), defining post-1986 undistributed earnings, is amended to clarify that the earnings pool is reduced only to account for distributions or deemed distributions that reduce earnings and profits and inclusions that result in previously-taxed amounts described in sections 959(c)(1) and (c)(2) or 1293(c). Thus, for example, in the case of a controlled foreign corporation owned 60 percent by a domestic corporate shareholder and 40 percent by a foreign shareholder, the earnings and taxes pools are reduced only to account for 60 percent of the foreign corporation's subpart F income.

The rules precluding special allocations of earnings and taxes in § 1.902–1(a)(9)(iv) and (10)(ii) of the proposed regulations have been retained in the final regulations. These regulations are intended to reverse the result in *Vulcan* v. *Commissioner,* 96 T.C. 410 (1991), aff'd per curiam, 959 F.2d 973 (11th Cir. 1992), nonacq. 1995–1 C.B. 1, for post-1986 taxable years. Several commenters argued that the *Vulcan* decision was correct and should be applied to both pre-1987 and post-1986 taxable years, and the regulations should be revised to reflect the decision. For the reasons stated in the preamble to the proposed regulations, the IRS declines to do so.

Commenters also argued that the rule precluding special allocations of earnings and taxes is inconsistent with § 1.904–6(a)(2). Section 1.904–6(a)(2) is an anti-abuse rule designed to prevent the use of accommodation parties to improve a United States taxpayer's foreign tax credit position. The rule states that if a taxpayer receives or accrues a dividend from a noncontrolled section 902 corporation and the Commissioner establishes the existence of an express or implied agreement that the dividend is paid out of the foreign corporation's passive or high withholding tax interest earnings, then only taxes imposed on passive or high withholding tax interest earnings will be considered related to the dividend. The IRS may invoke this rule to prevent a shareholder from sheltering investment income from tax by investing it through a noncontrolled section 902 corporation that distributes only the investment earnings to the shareholder, which then treats the distribution as a dividend sheltered by taxes paid on the corporation's hightaxed active business income. The IRS believes that this narrowly defined anti-abuse rule is an appropriate exception to the general rule of § 1.902–1(a)(9)(iv) and (a)(10)(ii) barring special allocations of earnings and taxes.

Section 1.902–1(a)(11) has been amended to clarify that the definition of a dividend in section 316(a) applies for purposes of section 902, and that the section 902 definition of a dividend also includes deemed dividends under sections 551 and 1248. Deemed inclusions under sections 951(a) and 1293 are not dividends for purposes of section 902. However, sections 960(a)(1) and 1293(f) provide that deemed paid taxes with respect to inclusions under sections 951(a) and 1293 are determined under section 902 in the same manner as if a dividend was paid.

Paragraph (a)(11) also has been amended to add a crossreference to section 1291 and § 1.1291–5 of the proposed regulations, which provide special rules for computing foreign taxes deemed paid with respect to distributions from section 1291 funds. These distributions are treated as dividends solely for foreign tax credit purposes, but the general section 902 computational rules do not apply.

A commenter correctly pointed out that the regulation's inclusion of deemed distributions under section 551 as dividends for purposes of section 902 is contrary to the holding in Revenue Ruling 74–59 (1974–1 C.B. 183) that an amount includible in gross income under section 551 is not considered a dividend received for purposes of the allowance of a foreign tax credit under section 902. The holding of the revenue ruling is based on language in the 1937 legislative history of the foreign personal holding company provisions. The Report of the Joint Committee on Tax Evasion and Avoidance of the Congress of the United States, H.R. Doc. No. 337, 75th Cong., 1st Sess. 18 (1937), recommended that shareholders of foreign personal holding companies not be allowed a credit for foreign income taxes paid by the foreign corporation with respect to amounts deemed distributed. The Report goes on to state that the committee recommended against allowing a credit because ''it is not administratively feasible, although it might seem equitable under the circumstances.''

Section 551(b) provides that amounts required to be included in the gross income of a U.S. shareholder under section 551(a) are treated as dividends, and under current law it is administratively feasible to allow deemed paid taxes to be computed with respect to deemed dividends. In addition, the Code now includes other anti-deferral regimes, e.g., the subpart F and passive foreign investment company provisions, the application of which may overlap with the foreign personal holding company rules. Shareholders are permitted to compute deemed paid taxes with respect to subpart F and passive foreign investment company inclusions.

The IRS, therefore, has concluded the revenue ruling is not supported by current law. A shareholder of a foreign personal holding company should be entitled to compute deemed paid taxes with respect to amounts required to be included in gross income as dividends under section 551(a). Revenue Ruling 74–59 (1974–1 C.B. 183) is hereby revoked effective as of the date these regulations are published in the Federal Register.

A commenter argued that the rule in § 1.902–1(b)(4), providing that no taxes are deemed paid with respect to dividends out of current earnings and profits when the foreign corporation has no post-1986 undistributed earnings and no accumulated earnings and profits (so-called ''nimble'' dividends) conflicts with the general purpose of the foreign tax credit to prevent double taxation. The rule is retained in the final regulations for two reasons. First, the legislative history of the Tax Reform Act of 1986 (Public Law 99–514) clearly indicates that Congress was aware of the issue and agreed with the position stated in the regulation. See S. Rep. No. 313, 99th Cong., 2d Sess. 321 (1986). Second, because no taxes can be deemed paid under the computational rules of section 902 when post-1986 undistributed earnings are zero or less than zero, no taxes are removed from the post-1986 foreign income taxes pool. Thus, all of the foreign corporation's taxes remain in its post-1986 foreign income taxes pool and are available to be credited if the corporation pays another dividend in a later year in which the post-1986 undistributed earnings pool is positive.

Section 1.902–1(c)(8) of the proposed regulations reserved on the application of section 902 in section 304 exchanges. Commenters suggested that the regulations should address this area by incorporating the holdings in Revenue Ruling 91–5 (1991–1 C.B. 114), and Revenue Ruling 92–86 (1992–1 C.B. 199). In addition, the commenters argued that the regulations should state that a deemed paid credit is available in a section 304 exchange involving a foreign parent corporation. The IRS is still studying the area and the regulations thus continue to reserve on the application of section 902 in a section 304 exchange.

Section 1.902–1(c)(9) of the proposed regulations is reserved in these final regulations. The proposed regulation

provided a cross-reference to regulations under section 905(c) with respect to adjustments to post-1986 undistributed earnings and taxes that result from a section 482 allocation of income. There currently are no regulations under section 905(c) addressing section 482 allocations and the IRS, therefore, has reserved this paragraph pending issuance of final regulations under section 905(c).

Section 1.902–1(d)(3) (ii) through (iv) of the proposed regulations is not included in the final regulations. Paragraph (d)(3) set out rules and examples exercising a grant of regulatory authority under the last sentence of section 904(d)(2)(E)(i) to limit beyond the statute the circumstances under which a dividend paid to a new U.S. shareholder by a controlled foreign corporation out of earnings accumulated while it was a controlled foreign corporation will be treated as dividends from a noncontrolled section 902 corporation. Identical rules were proposed in 1992 under section 904(d). See § 1.904–4(g)(3)(ii) through (iv) of the proposed regulations. The rules address the character of a dividend distribution under section 904(d) and are more appropriately placed in the regulations under that section. After considering the comments received, the rule will be finalized as part of the section 904 regulations.

Section 1.902–2

A commenter suggested that the deficit carryback rules in § 1.902–2(a)(1) should be amended to provide that a deficit in post-1986 undistributed earnings will not be carried back to pre-1987 years on a return of capital or capital gain distribution. The rule states that a deficit will be carried back when ''* * * a corporation makes a distribution to shareholders that is a dividend or would be a dividend if there were current or accumulated earnings and profits, * * * .'' The commenter suggests that the rule in the proposed regulation can result in ''locked-in'' taxes when earnings attributable to one or more pre-1987 years are eliminated by the deficit carryback. If the deficit stays in the post-1986 pool there is a chance it can be absorbed by future earnings, leaving the pre-1987 earnings and taxes intact. In support of its position, the commenter argues that section 902 establishes rules that minimize double taxation by allowing a taxpayer to compute a deemed paid credit on a taxable dividend. The legislative history indicates that the pooling provisions of section 902 are to apply solely for purposes of computing the deemed paid credit. Because a return of capital or capital gain distribution is not a taxable dividend and no section 902 credit is allowable, the commenter argues that the pooling rules (including the deficit carryback rules) should not apply.

The IRS declines to adopt the commenter's suggestion. When an amount is distributed in a post-1986 taxable year and there is a deficit in post-1986 undistributed earnings, the deficit must be carried back and reduce earnings and profits in pre-1987 years to determine whether any earnings remain to support treatment of the distribution as a dividend. To the extent there are earnings remaining in one or more pre-1987 years after a deficit is carried back, the distribution is a dividend. Any remaining amount is a return of capital and capital gain. It would be incongruous to adopt a rule providing a different result if a single dollar of pre-1987 accumulated profits remains in a pre-1987 year after a post-1986 deficit is carried back than if the deficit carryback eliminated all pre-1987 accumulated profits and the entire distribution were treated as a return of capital.

Another commenter argued that the interplay among § 1.902–2(b)(1) (pre-1987 accumulated deficit carries over to become the opening balance of post-1986 undistributed earnings pool) and § 1.902–1(b)(4) (no taxes deemed paid if a dividend is a nimble dividend) of the proposed regulations, and section 960 (incorporating the section 902 rules with respect to deemed inclusions under subpart F) results in a denial of deemed paid taxes to a U.S. shareholder if a controlled foreign corporation has both a pre-1987 accumulated deficit and post-1986 earnings and profits that are entirely subpart F income. The commenter suggests that regulations be issued under section 960 to provide, solely for purposes of that section, that accumulated deficits in pre-1987 accumulated profits will not carry over into the post-1986 pool.

The IRS cannot adopt the rule the commenter suggests. Congress amended sections 902 and 960 in 1986 specifically to eliminate different earnings and profits and deemed paid taxes computations for purposes of sections 902 and 960. Further, in the situation the commenter posits, the credits are deferred but not permanently disallowed. If the controlled foreign corporation earns enough post-1986 income to eliminate the accumulated deficit, any distribution or deemed distribution will carry with it a ratable share of post-1986 foreign income taxes.

A commenter argued that § 1.902–2(b)(2) and (3), Example 1, are incorrect because they imply that annual deficits in pre-1987 accumulated profits were required to be carried back under pre-1987 section 902 regardless of how foreign income taxes were determined. The commenter argues that pre-1987 section 902 requires a ''correlation'' between accumulated profits as determined under U.S. law and the foreign law method by which foreign taxes were determined.

The IRS disagrees with the comment and the proposed regulation has not been amended. The regulation reflects the IRS' longstanding position that in the case of a deficit in accumulated profits of a foreign corporation for a particular pre-1987 year, the deficit first reduces prior years' accumulated profits on a LIFO basis to the extent thereof, and then the remaining deficit reduces accumulated profits in subsequent years. That rule applies regardless of whether foreign law permits or requires the carryback or carryforward of losses. See Revenue Ruling 74–550 (1974–2 C.B. 209) and Revenue Ruling 87–72 (1987–2 C.B. 170).

Effect on Other Documents

The following revenue ruling is revoked as of January 7, 1997:

Revenue Ruling 74–59, 1974–1 C.B. 183.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is Caren Silver Shein of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.902–1 also issued under 26 U.S.C. 902(c)(7).

Section 1.902–2 also issued under 26 U.S.C. 902(c)(7). * * *

§§ 1.902–1 and 1.902–2 [Redesignated §§ 1.902–3 and 1.902–4]

Par. 2. Sections 1.902–1 and 1.902–2 are redesignated §§ 1.902–3 and 1.902–4, respectively.

Par. 3. Sections 1.902–0, 1.902–1 and 1.902–2 are added to read as follows:

§ 1.902–0 Outline of regulations provisions for section 902.

This section lists the provisions under section 902.

§ 1.902–1 Credit for domestic corporate shareholder of a foreign corporation for foreign income taxes paid by the foreign corporation.

(a) Definitions and special effective date.
- (1) Domestic shareholder.
- (2) First-tier corporation.
- (3) Second-tier corporation.
- (4) Third-tier corporation.
- (5) Example.
- (6) Upper- and lower-tier corporations.
- (7) Foreign income taxes.
- (8) Post-1986 foreign income taxes.
- (i) In general.
- (ii) Distributions out of earnings and profits accumulated by a lower-tier corporation in its taxable years beginning before January 1, 1987, and included in the gross income of an upper-tier corporation in its taxable year beginning after December 31, 1986.
- (iii) Foreign income taxes paid or accrued with respect to high withholding tax interest.
- (9) Post-1986 undistributed earnings.
- (i) In general.
- (ii) Distributions out of earnings and profits accumulated by a lower-tier corporation in its taxable years beginning before January 1, 1987, and included in the gross income of an upper-tier corporation in its taxable year beginning after December 31, 1986.
- (iii) Reduction for foreign income taxes paid or accrued.
- (iv) Special allocations.
- (10) Pre-1987 accumulated profits.
- (i) Definition.
- (ii) Computation of pre-1987 accumulated profits.
- (iii) Foreign income taxes attributable to pre-1987 accumulated profits.
- (11) Dividend.
- (12) Dividend received.
- (13) Special effective date.
- (i) Rule.
- (ii) Example.

(b) Computation of foreign income taxes deemed paid by a domestic shareholder, first-tier corporation, and second-tier corporation.
- (1) General rule.
- (2) Allocation rule for dividends attributable to post-1986 undistributed earnings and pre-1987 accumulated profits.
- (i) Portion of dividend out of post-1986 undistributed earnings.
- (ii) Portion of dividend out of pre-1987 accumulated profits.
- (3) Dividends paid out of pre-1987 accumulated profits.
- (4) Deficits in accumulated earnings and profits.
- (5) Examples.

(c) Special rules.
- (1) Separate computations required for dividends from each first-tier and lower-tier corporation.
- (i) Rule.
- (ii) Example.
- (2) Section 78 gross-up.
- (i) Foreign income taxes deemed paid by a domestic shareholder.
- (ii) Foreign income taxes deemed paid by an upper-tier corporation.
- (iii) Example.
- (3) Creditable foreign income taxes.
- (4) Foreign mineral income.
- (5) Foreign taxes paid or accrued in connection with the purchase or sale of certain oil and gas.
- (6) Foreign oil and gas extraction income.
- (7) United States shareholders of controlled foreign corporations.
- (8) Credit for foreign taxes deemed paid in a section 304 transaction.
- (9) Effect of section 482 adjustments on post-1986 foreign income taxes and post-1986 undistributed earnings.

(d) Dividends from controlled foreign corporations.
- (1) General rule.
- (2) Look-through.
- (i) Dividends.
- (ii) Coordination with section 960.
- (3) Dividends distributed out of earnings accumulated before a controlled foreign corporation became a controlled foreign corporation.
- (i) General rule.
- (ii) Dividend distributions out of earnings and profits for a year during which a shareholder that is currently a more-than-90-percent United States shareholder of a controlled foreign corporation was not a United States shareholder of the controlled foreign corporation.

(e) Information to be furnished.

(f) Examples.

(g) Effective date.

§ 1.902–2 Treatment of deficits in post-1986 undistributed earnings and pre-1987 accumulated profits of a first-, second-, or third-tier corporation for purposes of computing an amount of foreign taxes deemed paid § 1.902–1.

(a) Carryback of deficits in post-1986 undistributed earnings of a first-, second-, or third-tier corporation to pre-effective date taxable years.
- (1) Rule.
- (2) Examples.

(b) Carryforward of deficits in pre-1987 accumulated profits of a first-, second-, or third-tier corporation to post-1986 undistributed earnings for purposes of section 902.
- (1) General rule.
- (2) Effect of pre-effective date deficit.
- (3) Examples.

§ 1.902–3 Credit for domestic corporate shareholder of a foreign corporation for foreign income taxes paid with respect to accumulated profits of taxable years of the foreign corporation beginning before January 1, 1987.

- (a) Definitions.
- (1) Domestic shareholder.
- (2) First-tier corporation.
- (3) Second-tier corporation.
- (4) Third-tier corporation.
- (5) Foreign income taxes.
- (6) Dividend.
- (7) Dividend received.

(b) Domestic shareholder owning stock in a first-tier corporation.
- (1) In general.
- (2) Amount of foreign taxes deemed paid by a domestic shareholder.

(c) First-tier corporation owning stock in a second-tier corporation.
- (1) In general.
- (2) Amount of foreign taxes deemed paid by a first-tier corporation.

(d) Second-tier corporation owning stock in a third-tier corporation.
- (1) In general.
- (2) Amount of foreign taxes deemed paid by a second-tier corporation.

(e) Determination of accumulated profits of a foreign corporation.

(f) Taxes paid on or with respect to accumulated profits of a foreign corporation.

(g) Determination of earnings and profits of a foreign corporation.
- (1) Taxable year to which section 963 does not apply.
- (2) Taxable year to which section 963 applies.
- (3) Time and manner of making choice.
- (4) Determination by district director.

(h) Source of income from first-tier corporation and country to which tax is deemed paid.
- (1) Source of income.
- (2) Country to which taxes deemed paid.

(i) United Kingdom income taxes paid with respect to royalties.

(j) Information to be furnished.

(k) Illustrations.

(l) Effective date.

§ 1.902–4 Rules for distributions attributable to accumulated profits for taxable years in which a first-tier corporation was a less developed country corporation.

§ 1.902–1 Credit for domestic corporate shareholder of a foreign corporation for foreign income taxes paid by the foreign corporation.

(a) *Definitions and special effective date.* For purposes of section 902, this section, and § 1.902–2, the definitions provided in paragraphs (a) (1) through (12) of this section and the special effective date of paragraph (a)(13) of this section apply.

(1) *Domestic shareholder.* In the case of dividends received by a domestic corporation from a foreign corporation after December 31, 1986, the term domestic shareholder means a domestic corporation, other than an S corporation as defined in section 1361(a), that owns at least 10 percent of the voting stock of the foreign corporation at the time the domestic corporation receives a dividend from that foreign corporation.

(2) *First-tier corporation.* In the case of dividends received by a domestic shareholder from a foreign corporation in a taxable year beginning after December 31, 1986, the term first-tier corporation means a foreign corporation, at least 10 percent of the voting stock of which is owned by a domestic shareholder at the time the domestic shareholder receives a dividend from that foreign corporation. The term first-tier corporation also includes a DISC or former DISC, but only with respect to dividends from the DISC or former DISC that are treated under sections 861(a)(2)(D) and 862(a)(2) as income from sources without the United States.

(3) *Second-tier corporation.* In the case of dividends paid to a first-tier corporation by a foreign corporation in a taxable year beginning after December 31, 1986, the foreign corporation is a second-tier corporation if, at the time a first-tier corporation receives a dividend from that foreign corporation, the first-tier corporation owns at least 10 percent of the foreign corporation's voting stock and the product of the following equals at least 5 percent—

(i) The percentage of voting stock owned by the domestic shareholder in the first-tier corporation; multiplied by

(ii) The percentage of voting stock owned by the first-tier corporation in the second-tier corporation.

(4) *Third-tier corporation.* In the case of dividends paid to a second-tier corporation by a foreign corporation in a taxable year beginning after December 31, 1986, a foreign corporation is a third-tier corporation if, at the time a second-tier corporation receives a dividend from that foreign corporation, the second-tier corporation owns at least 10 percent of the foreign corporation's voting stock and the product of the following equals at least 5 percent—

(i) The percentage of voting stock owned by the domestic shareholder in the first-tier corporation; multiplied by

(ii) The percentage of voting stock owned by the first-tier corporation in the second-tier corporation; multiplied by

(iii) The percentage of voting stock owned by the second-tier corporation in the third-tier corporation.

(5) *Example.* The following example illustrates the ownership requirements of paragraphs (a) (1) through (4) of this section:

Example. (i) Domestic corporation M owns 30 percent of the voting stock of foreign corporation A on January 1, 1991, and for all periods thereafter. Corporation A owns 40 percent of the voting stock of foreign corporation B on January 1, 1991, and continues to own that stock until June 1, 1991, when Corporation A sells its stock in Corporation B. Both Corporation A and Corporation B use the calendar year as the taxable year. Corporation B pays a dividend out of its post-1986 undistributed earnings to Corporation A, which Corporation A receives on February 16, 1991. Corporation A pays a dividend out of its post-1986 undistributed earnings to Corporation M, which Corporation M receives on January 20, 1992. Corporation M uses a fiscal year ending on June 30 as the taxable year.

(ii) On February 16, 1991, when Corporation B pays a dividend to Corporation A, Corporation M satisfies the 10 percent stock ownership requirement of paragraphs (a) (1) and (2) of this section with respect to Corporation A. Therefore, Corporation A is a first-tier corporation within the meaning of paragraph (a)(2) of this section and Corporation M is a domestic shareholder of Corporation A within the meaning of paragraph (a)(1) of this section. Also on February 16, 1991, Corporation B is a second-tier corporation within the meaning of paragraph (a)(3) of this section because Corporation A owns at least 10 percent of its voting stock, and the percentage of voting stock owned by Corporation M in Corporation A on February 16, 1991 (30 percent) multiplied by the percentage of voting stock owned by Corporation A in Corporation B on February 16, 1991 (40 percent) equals 12 percent. Corporation A shall be deemed to have paid foreign income taxes of Corporation B with respect to the dividend received from Corporation B on February 16, 1991.

(iii) On January 20, 1992, Corporation M satisfies the 10-percent stock ownership requirement of paragraphs (a)(1) and (2) of this section with respect to Corporation A. Therefore, Corporation A is a first-tier corporation within the meaning of paragraph (a)(2) of this section and Corporation M is a domestic shareholder within the meaning of paragraph (a)(1) of this section. Accordingly, for its taxable year ending on June 30, 1992, Corporation M is deemed to have paid a portion of the post-1986 foreign income taxes paid, accrued, or deemed to be paid, by Corporation A. Those taxes will include taxes paid by Corporation B that were deemed paid by Corporation A with respect to the dividend paid by Corporation B to Corporation A on February 16, 1991, even though Corporation B is no longer a second-tier corporation with respect to Corporations A and M on January 20, 1992, and has not been a second-tier corporation with respect to Corporations A and M at any time during the taxable years of Corporations A and M that include January 20, 1992.

(6) *Upper- and lower-tier corporations.* In the case of a third-tier corporation, the term upper-tier corporation means a first- or second-tier corporation. In the case of a second-tier corporation, the term upper-tier corporation means a first-tier corporation. In the case of a first-tier corporation, the term lower-tier corporation means a second- or third-tier corporation. In the case of a second-tier corporation, the term lower-tier corporation means a third-tier corporation.

(7) *Foreign income taxes.* The term foreign income taxes means income, war profits, and excess profits taxes as defined in § 1.901–2(a), and taxes included in the term income, war profits, and excess profits taxes by reason of section 903, that are imposed by a foreign country or a possession of the United States, including any such taxes deemed paid by a foreign corporation under this section. Foreign income, war profits, and excess profits taxes shall not include amounts excluded from the definition of those taxes pursuant to section 901 and the regulations under that section. See also paragraphs (c)(4) and (5) of this section (concerning foreign taxes paid with respect to foreign mineral income and in connection with the purchase or sale of oil and gas).

(8) *Post-1986 foreign income taxes—*(i) *In general.* Except as provided in paragraphs (a)(10) and (13) of this section, the term post-1986 foreign income taxes of a foreign corporation means the sum of the foreign income taxes paid, accrued, or deemed paid in the taxable year of the foreign corporation in which it distributes a dividend plus the foreign income taxes paid, accrued, or deemed paid in the foreign corporation's prior taxable years beginning after December 31, 1986, to

the extent the foreign taxes were not paid or deemed paid by the foreign corporation on or with respect to earnings that in prior taxable years were distributed to, or otherwise included (e.g., under sections 304, 367(b), 551, 951(a), 1248 or 1293) in the income of, a foreign or domestic shareholder. Except as provided in paragraph (b)(4) of this section, foreign taxes paid or deemed paid by the foreign corporation on or with respect to earnings that were distributed or otherwise removed from post-1986 undistributed earnings in prior post-1986 taxable years shall be removed from post-1986 foreign income taxes regardless of whether the shareholder is eligible to compute an amount of foreign taxes deemed paid under section 902, and regardless of whether the shareholder in fact chose to credit foreign income taxes under section 901 for the year of the distribution or inclusion. Thus, if an amount is distributed or deemed distributed by a foreign corporation to a United States person that is not a domestic shareholder within the meaning of paragraph (a)(1) of this section (e.g., an individual or a corporation that owns less than 10% of the foreign corporation's voting stock), or to a foreign person that does not meet the definition of a first- or second-tier corporation under paragraph (a)(2) or (3) of this section, then although no foreign income taxes shall be deemed paid under section 902, foreign income taxes attributable to the distribution or deemed distribution that would have been deemed paid had the shareholder met the ownership requirements of paragraphs (a)(1) through (4) of this section shall be removed from post-1986 foreign income taxes. Further, if a domestic shareholder chooses to deduct foreign taxes paid or accrued for the taxable year of the distribution or inclusion, it shall nonetheless be deemed to have paid a proportionate share of the foreign corporation's post-1986 foreign income taxes under section 902(a), and the foreign taxes deemed paid must be removed from post-1986 foreign income taxes. In the case of a foreign corporation the foreign income taxes of which are determined based on an accounting period of less than one year, the term year means that accounting period. See sections 441(b)(3) and 443.

(ii) *Distributions out of earnings and profits accumulated by a lower-tier corporation in its taxable years beginning before January 1, 1987, and included in the gross income of an upper-tier corporation in its taxable year beginning after December 31, 1986.* Post-1986 foreign income taxes shall include foreign income taxes that are deemed paid by an upper-tier corporation with respect to distributions from a lower-tier corporation out of nonpreviously taxed pre-1987 accumulated profits, as defined in paragraph (a)(10) of this section, that are received by an upper-tier corporation in any taxable year of the upper-tier corporation beginning after December 31, 1986, provided the upper-tier corporation's earnings and profits in that year are included in its post-1986 undistributed earnings under paragraph (a)(9) of this section. Foreign income taxes deemed paid with respect to a distribution of pre-1987 accumulated profits shall be translated from the functional currency of the lower-tier corporation into dollars at the spot exchange rate in effect on the date of the distribution. To determine the character of the earnings and profits and associated taxes for foreign tax credit limitation purposes, see section 904 and § 1.904–7(a).

(iii) *Foreign income taxes paid or accrued with respect to high withholding tax interest.* Post-1986 foreign income taxes shall not include foreign income taxes paid or accrued by a noncontrolled section 902 corporation (as defined in section 904(d)(2)(E)(i)) with respect to high withholding tax interest (as defined in section 904(d)(2)(B)) to the extent the foreign tax rate imposed on such interest exceeds 5 percent. See section 904(d)(2)(E)(ii) and § 1.904–4(g)(2)(iii). The reduction in foreign income taxes paid or accrued by the amount of tax in excess of 5 percent imposed on high withholding tax interest income must be computed in functional currency before foreign income taxes are translated into U.S. dollars and included in post-1986 foreign income taxes.

(9) *Post-1986 undistributed earnings*—(i) *In general.* Except as provided in paragraphs (a) (10) and (13) of this section, the term post-1986 undistributed earnings means the amount of the earnings and profits of a foreign corporation (computed in accordance with sections 964(a) and 986) accumulated in taxable years of the foreign corporation beginning after December 31, 1986, determined as of the close of the taxable year of the foreign corporation in which it distributes a dividend. Post-1986 undistributed earnings shall not be reduced by reason of any earnings distributed or otherwise included in income, for example under section 304, 367(b), 551, 951(a), 1248 or 1293, during the taxable year. Post-1986 undistributed earnings shall be reduced to account for distributions or deemed distributions that reduced earnings and profits and inclusions that resulted in previously-taxed amounts described in section 959(c) (1) and (2) or section 1293(c) in prior taxable years beginning after December 31, 1986. Thus, post-1986 undistributed earnings shall not be reduced to the extent of the ratable share of a controlled foreign corporation's subpart F income, as defined in section 952, attributable to a shareholder that is not a United States shareholder within the meaning of section 951(b) or section 953(c)(1)(A), because that amount has not been included in a shareholder's gross income. Post-1986 undistributed earnings shall be reduced as provided herein regardless of whether any shareholder is deemed to have paid any foreign taxes, and regardless of whether any domestic shareholder chose to claim a foreign tax credit under section 901(a) for the year of the distribution. For rules on carrybacks and carryforwards of deficits and their effect on post-1986 undistributed earnings, see § 1.902–2. In the case of a foreign corporation the foreign income taxes of which are computed based on an accounting period of less than one year, the term year means that accounting period. See sections 441(b)(3) and 443.

(ii) *Distributions out of earnings and profits accumulated by a lower-tier corporation in its taxable years beginning before January 1, 1987, and included in the gross income of an upper-tier corporation in its taxable year beginning after December 31, 1986.* Distributions by a lower-tier corporation out of non-previously taxed pre-1987 accumulated profits, as defined in paragraph (a)(10) of this section, that are received by an upper-tier corporation in any taxable year of the upper-tier corporation beginning after December 31, 1986, shall be treated as post-1986 undistributed earnings of the upper-tier corporation, provided the upper-tier corporation's earnings and profits for that year are included in its post-1986 undistributed earnings under paragraph (a)(9)(i) of this section. To determine the character of the earnings and profits and associated taxes for foreign tax credit limitation purposes, see section 904 and § 1.904–7(a).

(iii) *Reduction for foreign income taxes paid or accrued.* In computing post-1986 undistributed earnings, earnings and profits shall be reduced by foreign income taxes paid or accrued regardless of whether the taxes are creditable. Thus, earnings and profits shall be reduced by foreign income taxes paid with respect to high withholding tax interest even though a portion of the taxes is not creditable

pursuant to section 904(d)(2)(E)(ii) and is not included in post-1986 foreign income taxes under paragraph (a)(8)(iii) of this section. Earnings and profits of an upper-tier corporation, however, shall not be reduced by foreign income taxes paid by a lower-tier corporation and deemed to have been paid by the upper-tier corporation.

(iv) *Special allocations*. The term post-1986 undistributed earnings means the total amount of the earnings of the corporation determined at the corporate level. Special allocations of earnings and taxes to particular shareholders, whether required or permitted by foreign law or a shareholder agreement, shall be disregarded. If, however, the Commissioner establishes that there is an agreement to pay dividends only out of earnings in the separate categories for passive or high withholding tax interest income, then only taxes imposed on passive or high withholding tax interest earnings shall be treated as related to the dividend. See § 1.904–6(a)(2).

(10) *Pre-1987 accumulated profits*—(i) *Definition*. The term pre-1987 accumulated profits means the amount of the earnings and profits of a foreign corporation computed in accordance with section 902 and attributable to its taxable years beginning before January 1, 1987. If the special effective date of paragraph (a)(13) of this section applies, pre-1987 accumulated profits also includes any earnings and profits (computed in accordance with sections 964(a) and 986) attributable to the foreign corporation's taxable years beginning after December 31, 1986, but before the first day of the first taxable year of the foreign corporation in which the ownership requirements of section 902(c)(3)(B) and paragraphs (a) (1) through (4) of this section are met with respect to that corporation.

(ii) *Computation of pre-1987 accumulated profits*. Pre-1987 accumulated profits must be computed under United States principles governing the computation of earnings and profits. Pre-1987 accumulated profits are determined at the corporate level. Special allocations of accumulated profits and taxes to particular shareholders with respect to distributions of pre-1987 accumulated profits in taxable years beginning after December 31, 1986, whether required or permitted by foreign law or a shareholder agreement, shall be disregarded. Pre-1987 accumulated profits of a particular year shall be reduced by amounts distributed from those accumulated profits or otherwise included in income from those accumulated profits, for example under sections 304, 367(b), 551, 951(a), 1248 or 1293. If a deficit in post-1986 undistributed earnings is carried back to offset pre-1987 accumulated profits, pre-1987 accumulated profits of a particular taxable year shall be reduced by the amount of the deficit carried back to that year. See § 1.902–2. The amount of a distribution out of pre-1987 accumulated profits, and the amount of foreign income taxes deemed paid under section 902, shall be determined and translated into United States dollars by applying the law as in effect prior to the effective date of the Tax Reform Act of 1986. See §§ 1.902–3, 1.902–4 and 1.964–1.

(iii) *Foreign income taxes attributable to pre-1987 accumulated profits*. The term pre-1987 foreign income taxes means any foreign income taxes paid, accrued, or deemed paid by a foreign corporation on or with respect to its pre-1987 accumulated profits. Pre-1987 foreign income taxes of a particular year shall be reduced by the amount of taxes paid or deemed paid by the foreign corporation on or with respect to amounts distributed or otherwise included in income from pre-1987 accumulated profits of that year. Thus, pre-1987 foreign income taxes shall be reduced by the amount of taxes deemed paid by a domestic shareholder (regardless of whether the shareholder chose to credit foreign income taxes under section 901 for the year of the distribution or inclusion) or a first-tier or second-tier corporation, and by the amount of taxes that would have been deemed paid had any other shareholder been eligible to compute an amount of foreign taxes deemed paid under section 902. Foreign income taxes deemed paid with respect to a distribution of pre-1987 accumulated profits shall be translated from the functional currency of the distributing corporation into United States dollars at the spot exchange rate in effect on the date of the distribution.

(11) *Dividend*. For purposes of section 902, the definition of the term dividend in section 316 and the regulations under that section applies. Thus, for example, distributions and deemed distributions under sections 302, 304, 305(b) and 367(b) that are treated as dividends within the meaning of section 301(c)(1) also are dividends for purposes of section 902. In addition, the term dividend includes deemed dividends under sections 551 and 1248, but not deemed inclusions under sections 951(a) and 1293. For rules concerning excess distributions from section 1291 funds that are treated as dividends solely for foreign tax credit purposes, (see Regulation Project INTL–656–87 published in 1992–1 C.B. 1124; see § 601.601(d)(2)(ii)(*b*) of this chapter).

(12) *Dividend received*. A dividend shall be considered received for purposes of section 902 when the cash or other property is unqualifiedly made subject to the demands of the distributee. See § 1.301–1(b). A dividend also is considered received for purposes of section 902 when it is deemed received under section 304, 367(b), 551, or 1248.

(13) *Special effective date*—(i) *Rule*. If the first day on which the ownership requirements of section 902(c)(3)(B) and paragraphs (a)(1) through (4) of this section are met with respect to a foreign corporation, without regard to whether a dividend is distributed, is in a taxable year of the foreign corporation beginning after December 31, 1986, then—

(A) The post-1986 undistributed earnings and post-1986 foreign income taxes of the foreign corporation shall be determined by taking into account only taxable years beginning on and after the first day of the first taxable year of the foreign corporation in which the ownership requirements are met, including subsequent taxable years in which the ownership requirements of section 902(c)(3)(B) and paragraphs (a)(1) through (4) of this section are not met; and

(B) Earnings and profits accumulated prior to the first day of the first taxable year of the foreign corporation in which the ownership requirements of section 902(c)(3)(B) and paragraphs (a)(1) through (4) of this section are met shall be considered pre-1987 accumulated profits.

(ii) *Example*. The following example illustrates the special effective date rules of this paragraph (a)(13):

Example. As of December 31, 1991, and since its incorporation, foreign corporation A has owned 100 percent of the stock of foreign corporation B. Corporation B is not a controlled foreign corporation. Corporation B uses the calendar year as its taxable year, and its functional currency is the u. Assume 1u equals $1 at all relevant times. On April 1, 1992, Corporation B pays a 200u dividend to Corporation A and the ownership requirements of section 902(c)(3)(B) and paragraphs (a)(1) through (4) of this section are not met at that time. On July 1, 1992, domestic corporation M purchases 10 percent of the Corporation B stock from Corporation A and, for the first time, Corporation B meets the ownership requirements of section 902(c)(3)(B) and paragraph (a)(2) of this section. Corporation M uses the calendar year as its taxable year. Corporation B does not distribute any dividends to Corporation M during 1992. For its taxable year ending December 31, 1992, Corporation B has 500u of earnings and profits (after foreign taxes but before taking into account the 200u

distribution to Corporation A) and pays 100u of foreign income taxes that is equal to $100. Pursuant to paragraph (a)(13)(i) of this section, Corporation B's post-1986 undistributed earnings and post-1986 foreign income taxes will include earnings and profits and foreign income taxes attributable to Corporation B's entire 1992 taxable year and all taxable years thereafter. Thus, the April 1, 1992, dividend to Corporation A will reduce post-1986 undistributed earnings to 300u (500u–200u) under paragraph (a)(9)(i) of this section. The foreign income taxes attributable to the amount distributed as a dividend to Corporation A will not be creditable because Corporation A is not a domestic shareholder. Post-1986 foreign income taxes, however, will be reduced by the amount of foreign taxes attributable to the dividend. Thus, as of the beginning of 1993, Corporation B has $60 ($100–[$100×40% (200u/500u)]) of post-1986 foreign income taxes. See paragraphs (a)(8)(i) and (b)(1) of this section.

(b) *Computation of foreign income taxes deemed paid by a domestic shareholder, first-tier corporation, and second-tier corporation*—(1) *General rule.* If a foreign corporation pays a dividend in any taxable year out of post-1986 undistributed earnings to a shareholder that is a domestic shareholder or an upper-tier corporation at the time it receives the dividend, the recipient shall be deemed to have paid the same proportion of any post-1986 foreign income taxes paid, accrued or deemed paid by the distributing corporation on or with respect to post-1986 undistributed earnings which the amount of the dividend out of post-1986 undistributed earnings (determined without regard to the gross-up under section 78) bears to the amount of the distributing corporation's post-1986 undistributed earnings. An upper-tier corporation shall not be entitled to compute an amount of foreign taxes deemed paid on a dividend from a lower-tier corporation, however, unless the ownership requirements of paragraphs (a) (1) through (4) of this section are met at each tier at the time the upper-tier corporation receives the dividend. Foreign income taxes deemed paid by a domestic shareholder or an upper-tier corporation must be computed under the following formula:

$$\text{Foreign income taxes deemed paid by domestic shareholder (or upper-tier corporation)} = \text{Post-1986 foreign income taxes of first-tier corporation (or lower-tier corporation)} \times \frac{\text{Dividend paid to domestic shareholder (or upper-tier corporation) by first-tier corporation (or lower-tier corporation)}}{\text{Post-1986 undistributed earnings of first-tier corporation (or lower-tier corporation)}}$$

(2) *Allocation rule for dividends attributable to post-1986 undistributed earnings and pre-1987 accumulated profits*—(i) *Portion of dividend out of post-1986 undistributed earnings.* Dividends will be deemed to be paid first out of post-1986 undistributed earnings to the extent thereof. If dividends exceed post-1986 undistributed earnings and dividends are paid to more than one shareholder, then the dividend to each shareholder shall be deemed to be paid pro rata out of post-1986 undistributed earnings, computed as follows:

$$\text{Portion of Dividend to a Shareholder Attributable to Post-1986 Undistributed Earnings} = \text{Post-1986 Undistributed Earnings} \times \frac{\text{Dividends to } \textit{Shareholder}}{\text{Total Dividends Paid To all Shareholders}}$$

(ii) *Portion of dividend out of pre-1987 accumulated profits.* After the portion of the dividend attributable to post-1986 undistributed earnings is determined under paragraph (b)(2)(i) of this section, the remainder of the dividend received by a shareholder is attributable to pre-1987 accumulated profits to the extent thereof. That part of the dividend attributable to pre-1987 accumulated profits will be treated as paid first from the most recently accumulated earnings and profits. See § 1.902–3. If dividends paid out of pre-1987 accumulated profits are attributable to more than one pre-1987 taxable year and are paid to more than one shareholder, then the dividend to each shareholder attributable to earnings and profits accumulated in a particular pre-1987 taxable year shall be deemed to be paid pro rata out of accumulated profits of that taxable year, computed as follows:

$$\text{Portion of Dividend to a Shareholder Attributable to Accumulated Profits of a Particular Pre-1987 Taxable Year} = \text{(Dividend Paid Out of Pre-1987 Accumulated Profits with Respect to the Particular Pre-1987 Taxable Year} \times \frac{\text{Dividend to Shareholder}}{\text{Total Dividends Paid to all Shareholders}}$$

(3) *Dividends paid out of pre-1987 accumulated profits.* If dividends are paid by a first-tier corporation or a lower-tier corporation out of pre-1987 accumulated profits, the domestic shareholder or upper-tier corporation that receives the dividends shall be deemed to have paid foreign income taxes to the extent provided under section 902 and the regulations thereunder as in effect prior to the effective date of the Tax Reform Act of 1986. See paragraphs (a) (10) and (13) of this section and §§ 1.902–3 and 1.902–4.

(4) *Deficits in accumulated earnings and profits.* No foreign income taxes shall be deemed paid with respect to a distribution from a foreign corporation out of current earnings and profits that is treated as a dividend under section 316(a)(2), and post-1986 foreign income taxes shall not be reduced, if as of the end of the taxable year in which the dividend is paid or accrued, the corporation has zero or a deficit in post-1986 undistributed earnings and the sum of current plus accumulated earnings and profits is zero or less than zero. The dividend shall reduce post-

1986 undistributed earnings and accumulated earnings and profits.

(5) *Examples.* The following examples illustrate the rules of this paragraph (b):

Example 1. Domestic corporation M owns 100 percent of foreign corporation A. Both Corporation M and Corporation A use the calendar year as the taxable year, and Corporation A uses the u as its functional currency. Assume that 1u equals $1 at all relevant times. All of Corporation A's pre-1987 accumulated profits and post-1986 undistributed earnings are non-subpart F general limitation earnings and profits under section 904(d)(1)(I). As of December 31, 1992, Corporation A has 100u of post-1986 undistributed earnings and $40 of post-1986 foreign income taxes. For its 1986 taxable year, Corporation A has accumulated profits of 200u (net of foreign taxes) and paid 60u of foreign income taxes on those earnings. In 1992, Corporation A distributes 150u to Corporation M. Corporation A has 100u of post-1986 undistributed earnings and the dividend, therefore, is treated as paid out of post-1986 undistributed earnings to the extent of 100u. The first 100u distribution is from post-1986 undistributed earnings, and, because the distribution exhausts those earnings, Corporation M is deemed to have paid the entire amount of post-1986 foreign income taxes of Corporation A ($40). The remaining 50u dividend is treated as a dividend out of 1986 accumulated profits under paragraph (b)(2) of this section. Corporation M is deemed to have paid $15 (60u×50u/200u, translated at the appropriate exchange rates) of Corporation A's foreign income taxes for 1986. As of January 1, 1993, Corporation A's post-1986 undistributed earnings and post-1986 foreign income taxes are 0. Corporation A has 150u of accumulated profits and 45u of foreign income taxes remaining in 1986.

Example 2. Domestic corporation M (incorporated on January 1, 1987) owns 100 percent of foreign corporation A (incorporated on January 1, 1987). Both Corporation M and Corporation A use the calendar year as the taxable year, and Corporation A uses the u as its functional currency. Assume that 1u equals $1 at all relevant times. Corporation A has no pre-1987 accumulated profits. All of Corporation A's post-1986 undistributed earnings are non-subpart F general limitation earnings and profits under section 904(d)(1)(I). On January 1, 1992, Corporation A has a deficit in accumulated earnings and profits and a deficit in post-1986 undistributed earnings of (200u). No foreign taxes have been paid with respect to post-1986 undistributed earnings. During 1992, Corporation A earns 100u (net of foreign taxes), pays $40 of foreign taxes on those earnings and distributes 50u to Corporation M. As of the end of 1992, Corporation A has a deficit of (100u) ((200u) post1986 undistributed earnings + 100u current earnings and profits) in post-1986 undistributed earnings. Corporation A, however, has current earnings and profits of 100u. Therefore, the 50u distribution is treated as a dividend in its entirety under section 316(a)(2). Under paragraph (b)(4) of this section, Corporation M is not deemed to have paid any of the foreign taxes paid by Corporation A because post-1986 undistributed earnings and the sum of current plus accumulated earnings and profits are (100u). The dividend reduces both post-1986 undistributed earnings and accumulated earnings and profits. Therefore, as of January 1, 1993, Corporation A's post-1986 undistributed earnings are (150u) and its accumulated earnings and profits are (150u). Corporation A's post-1986 foreign income taxes at the start of 1993 are $40.

(c) *Special rules*—(1) *Separate computations required for dividends from each first-tier and lower-tier corporation*—(i) *Rule.* If in a taxable year dividends are received by a domestic shareholder or an upper-tier corporation from two or more first-tier corporations or two or more lower-tier corporations, the foreign income taxes deemed paid by the domestic shareholder or the upper-tier corporation under sections 902 (a) and (b) and paragraph (b) of this section shall be computed separately with respect to the dividends received from each first-tier corporation or lower-tier corporation. If a domestic shareholder receives dividend distributions from one or more first-tier corporations and in the same taxable year the first-tier corporation receives dividends from one or more lower-tier corporations, then the amount of foreign income taxes deemed paid shall be computed by starting with the lowest-tier corporation and working upward.

(ii) *Example.* The following example illustrates the application of this paragraph (c)(1):

Example. P, a domestic corporation, owns 40 percent of the voting stock of foreign corporation S. S owns 30 percent of the voting stock of foreign corporation T, and 30 percent of the voting stock of foreign corporation U. Neither S, T, nor U is a controlled foreign corporation. P, S, T and U all use the calendar year as their taxable year. In 1993, T and U both pay dividends to S and S pays a dividend to P. To compute foreign taxes deemed paid, paragraph (c)(1) of this section requires P to start with the lowest tier corporations and to compute foreign taxes deemed paid separately for dividends from each first-tier and lower-tier corporation. Thus, S first will compute foreign taxes deemed paid separately on its dividends from T and U. The deemed paid taxes will be added to S's post-1986 foreign income taxes, and the dividends will be added to S's post-1986 undistributed earnings. Next, P will compute foreign taxes deemed paid with respect to the dividend from S. This computation will take into account the taxes paid by T and U and deemed paid by S.

(2) *Section 78 gross-up*—(i) *Foreign income taxes deemed paid by a domestic shareholder.* Except as provided in section 960(b) and the regulations under that section (relating to amounts excluded from gross income under section 959(b)), any foreign income taxes deemed paid by a domestic shareholder in any taxable year under section 902(a) and paragraph (b) of this section shall be included in the gross income of the domestic shareholder for the year as a dividend under section 78. Amounts included in gross income under section 78 shall, for purposes of section 904, be deemed to be derived from sources within the United States to the extent the earnings and profits on which the taxes were paid are treated under section 904(g) as United States source earnings and profits. Section 1.904–5(m)(6). Amounts included in gross income under section 78 shall be treated for purposes of section 904 as income in a separate category to the extent that the foreign income taxes were allocated and apportioned to income in that separate category. See section 904(d)(3)(G) and § 1.904–6(b)(3).

(ii) *Foreign income taxes deemed paid by an upper-tier corporation.* Foreign income taxes deemed paid by an uppertier corporation on a distribution from a lower-tier corporation are not included in the earnings and profits of the upper-tier corporation. For purposes of section 904, foreign income taxes shall be allocated and apportioned to income in a separate category to the extent those taxes were allocated to the earnings and profits of the lower-tier corporation in that separate category. See section 904(d)(3)(G) and § 1.904–6(b)(3). To the extent that section 904(g) treats the earnings of the lower-tier corporation on which those foreign income taxes were paid as United States source earnings and profits, the foreign income taxes deemed paid by the upper-tier corporation on the distribution from the lower-tier corporation shall be treated as attributable to United States source earnings and profits. See section 904(g) and § 1.904–5(m)(6).

(iii) *Example.* The following example illustrates the rules of this paragraph (c)(2):

Example. P, a domestic corporation, owns 100 percent of the voting stock of controlled foreign corporation S. Corporations P and S use the calendar year as their taxable year, and S uses the u as its functional currency. Assume that 1u equals $1 at all relevant times. As of January 1, 1992, S has –0– post-1986 undistributed earnings and –0– post-1986 foreign income taxes. In 1992, S earns 150u of non-subpart F general limitation income net of foreign taxes and pays 60u of foreign income taxes. As of the end of 1992, but before dividend payments, S has 150u of post-1986 undistributed earnings and $60 of post-1986 foreign income taxes. Assume that 50u of S's earnings for 1992 are from United States sources. S pays P a dividend of 75u

which P receives in 1992. Under § 1.904–5(m)(4), one-third of the dividend, or 25u (75u×50u/150u), is United States source income to P. P computes foreign taxes deemed paid on the dividend under paragraph (b)(1) of this section of $30 ($60×50%[75u/150u]) and includes that amount in gross income under section 78 as a dividend. Because 25u of the 75u dividend is United States source income to P, $10 ($30×33.33%[25u/75u]) of the section 78 dividend will be treated as United States source income to P under this paragraph (c)(2).

(3) *Creditable foreign income taxes.* The amount of creditable foreign income taxes under section 901 shall include, subject to the limitations and conditions of sections 902 and 904, foreign income taxes actually paid and deemed paid by a domestic shareholder that receives a dividend from a first-tier corporation. Foreign income taxes deemed paid by a domestic shareholder under paragraph (b) of this section shall be deemed paid by the domestic shareholder only for purposes of computing the foreign tax credit allowed under section 901.

(4) *Foreign mineral income.* Certain foreign income, war profits and excess profits taxes paid or accrued with respect to foreign mineral income will not be considered foreign income taxes for purposes of section 902. See section 901(e) and § 1.901–3.

(5) *Foreign taxes paid or accrued in connection with the purchase or sale of certain oil and gas.* Certain income, war profits, or excess profits taxes paid or accrued to a foreign country in connection with the purchase and sale of oil or gas extracted in that country will not be considered foreign income taxes for purposes of section 902. See section 901(f).

(6) *Foreign oil and gas extraction income.* For rules relating to reduction of the amount of foreign income taxes deemed paid with respect to foreign oil and gas extraction income, see section 907(a) and the regulations under that section.

(7) *United States shareholders of controlled foreign corporations.* See paragraph (d) of this section and sections 960 and 962 and the regulations under those sections for special rules relating to the application of section 902 in computing foreign income taxes deemed paid by United States shareholders of controlled foreign corporations.

(8) *Credit for foreign taxes deemed paid in a section 304 transaction.* [Reserved].

(9) Effect of section 482 adjustments on post-1986 foreign income taxes and post-1986 undistributed earnings. [Reserved].

(d) *Dividends from controlled foreign corporations*—(1) *General rule.* Except as provided in paragraph (d)(3) of this section, if a dividend is received by a domestic shareholder that is a United States shareholder (as defined in section 951(b) or section 953(c)(1)(A)) from a first-tier corporation that is a controlled foreign corporation (as defined in section 957(a) or section 953(c)(1)(B)), or by an upper-tier corporation from a lower-tier corporation if the corporations are related look-through entities within the meaning of § 1.904–5(i), the following rule applies. If a dividend is paid out of post-1986 undistributed earnings or pre-1987 accumulated profits of the upper- or lower-tier controlled foreign corporation attributable to more than one separate category under section 904(d), the amount of foreign income taxes deemed paid by the domestic shareholder or the upper-tier corporation under section 902 and paragraph (b) of this section shall be computed separately with respect to the post-1986 undistributed earnings or pre-1987 accumulated profits in each separate category out of which the dividend is paid. See § 1.904–5(c)(4) and paragraph (d)(2) of this section. The separately computed deemed paid taxes shall be added to other taxes paid by the U.S. shareholder or upper-tier corporation with respect to income in the appropriate separate category.

(2) *Look-through*—(i) *Dividends.* Except as otherwise provided in paragraph (d)(3) of this section, any dividend distribution out of post-1986 undistributed earnings of a look-through entity to a related look-through entity shall be deemed to be paid pro rata out of each separate category of income. See §§ 1.904–5(c)(4) and 1.904–7. The portion of the foreign income taxes attributable to a particular separate category that shall be deemed paid by the domestic shareholder or upper-tier corporation must be computed under the following formula:

$$\text{Foreign taxes deemed paid by domestic shareholder or upper-tier corporation with respect to a separate category under section 904(d)} = \text{Post-1986 foreign income taxes of first-tier or lower-tier corporation allocated and apportioned to a separate category under § 1.904–6} \times \frac{\text{Dividend amount attributable to a separate category}}{\text{Post-1986 undistributed earnings of first-tier or lower-tier corporation attributable to the separate category}}$$

(ii) Coordination with section 960. For rules coordinating the computation of foreign taxes deemed paid with respect to amounts included in gross income under section 951(a) and dividends distributed by a controlled foreign corporation, see section 960 and the regulations under that section.

(3) *Dividends distributed out of earnings accumulated before a controlled foreign corporation became a controlled foreign corporation*—(i) *General rule.* Any dividend distributed by a controlled foreign corporation out of earnings accumulated before the controlled foreign corporation became a controlled foreign corporation shall be treated as a dividend from a noncontrolled section 902 corporation regardless of whether the earnings were accumulated in a taxable year beginning before January 1, 1987, or after December 31, 1986.

(ii) *Dividend distributions out of earnings and profits for a year during which a shareholder that is currently a more-than-90-percent United States shareholder of a controlled foreign corporation was not a United States shareholder of the controlled foreign corporation.* [Reserved].

(e) *Information to be furnished.* If the credit for foreign income taxes claimed under section 901 includes foreign income taxes deemed paid under section 902 and paragraph (b) of this section, the domestic shareholder must furnish the same information with respect to the foreign income taxes deemed paid as it is required to furnish with respect to the foreign income taxes it directly paid or accrued and for which the credit is claimed. See § 1.905–2. For other information required to be furnished by the domestic shareholder for the annual accounting period of certain foreign corporations ending with

or within the shareholder's taxable year, and for reduction in the amount of foreign income taxes paid, accrued, or deemed paid for failure to furnish the required information, see section 6038 and the regulations under that section.

(f) *Examples.* The following examples illustrate the application of this section:

Example 1. Since 1987, domestic corporation M has owned 10 percent of the one class of stock of foreign corporation A. The remaining 90 percent of Corporation A's stock is owned by Z, a foreign corporation. Corporation A is not a controlled foreign corporation. Corporation A uses the u as its functional currency, and 1u equals $1 at all relevant times. Both Corporation A and Corporation M use the calendar year as the taxable year. In 1992, Corporation A pays a 30u dividend out of post-1986 undistributed earnings, 3u to Corporation M and 27u to Corporation Z. Corporation M is deemed, under paragraph (b) of this section, to have paid a portion of the post-1986 foreign income taxes paid by Corporation A and includes the amount of foreign taxes deemed paid in gross income under section 78 as a dividend. Both the foreign taxes deemed paid and the dividend would be subject to a separate limitation for dividends from Corporation A, a noncontrolled section 902 corporation. Under paragraph (a)(9)(i) of this section, Corporation A must reduce its post-1986 undistributed earnings as of January 1, 1993, by the total amount of dividends paid to Corporation M and Corporation Z in 1992. Under paragraph (a)(8)(i) of this section, Corporation A must reduce its post-1986 foreign income taxes as of January 1, 1993, by the amount of foreign income taxes that were deemed paid by Corporation M and by the amount of foreign income taxes that would have been deemed paid by Corporation Z had Corporation Z been eligible to compute an amount of foreign income taxes deemed paid with respect to the dividend received from Corporation A. Foreign income taxes deemed paid by Corporation M and Corporation A's opening balances in post-1986 undistributed earnings and post-1986 foreign income taxes for 1993 are computed as follows:

1. Assumed post-1986 undistributed earnings of Corporation A at start of 1992	25u
2. Assumed post-1986 foreign income taxes of Corporation A at start of 1992	$25
3. Assumed pre-tax earnings and profits of Corporation A for 1992	50u
4. Assumed foreign income taxes paid or accrued by Corporation A in 1992	15u
5. Post-1986 undistributed earnings in Corporation A for 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4)	60u
6. Post-1986 foreign income taxes in Corporation A for 1992 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates).	$40
7. Dividends paid out of post-1986 undistributed earnings of Corporation A to Corporation M in 1992	3u
8. Percentage of Corporation A's post-1986 undistributed earnings paid to Corporation M (Line 7 divided by Line 5)	5%
9. Foreign income taxes of Corporation A deemed paid by Corporation M under section 902(a) (Line 6 multiplied by Line 8)	$2
10. Total dividends paid out of post-1986 undistributed earnings of Corporation A to all shareholders in 1992	30u
11. Percentage of Corporation A's post-1986 undistributed earnings paid to all shareholders in 1992 (Line 10 divided by Line 5).	50%
12. Post-1986 foreign income taxes paid with respect to post-1986 undistributed earnings distributed to all shareholders in 1992 (Line 6 multiplied by Line 11).	$20
13. Corporation A's post-1986 undistributed earnings at the start of 1993 (Line 5 minus Line 10)	30u
14. Corporation A's post-1986 foreign income taxes at the start of 1993 (Line 6 minus Line 12)	$20

Example 2. (i) The facts are the same as in *Example 1,* except that Corporation M has also owned 10 percent of the one class of stock of foreign corporation B since 1987. Corporation B uses the calendar year as the taxable year. The remaining 90 percent of Corporation B's stock is owned by Corporation Z. Corporation B is not a controlled foreign corporation. Corporation B uses the u as its functional currency, and 1u equals $1 at all relevant times. In 1992, Corporation B has earnings and profits and pays foreign income taxes, a portion of which are attributable to high withholding tax interest, as defined in section 904(d)(2)(B)(i). Corporation B must reduce its pool of post-1986 foreign income taxes by the amount of tax imposed on high withholding tax interest in excess of 5 percent because that amount is not treated as a tax for purposes of section 902. See section 904(d)(2)(E)(ii) and paragraph (a)(8)(iii) of this section. Corporation B pays 50u in dividends in 1992, 5u to Corporation M and 45u to Corporation Z. Corporation M must compute its section 902(a) deemed paid taxes separately for the dividends it receives in 1992 from Corporation A (as computed in *Example 1*) and from Corporation B. Foreign income taxes of Corporation B deemed paid by Corporation M, and Corporation B's opening balances in post-1986 undistributed earnings and post-1986 foreign income taxes for 1993 are computed as follows:

1. Assumed post-1986 undistributed earnings of Corporation B at start of 1992	(100u)
2. Assumed post-1986 foreign income taxes of Corporation B at start of 1992	$0
3. Assumed pre-tax earnings and profits of Corporation B for 1992 (including 50u of high withholding tax interest on which 5u of tax is withheld).	302.50u
4. Assumed foreign income taxes paid or accrued by Corporation B in 1992	102.50u
5. Post-1986 undistributed earnings in Corporation B for 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4)	100u
6. Amount of foreign income tax of Corporation B imposed on high withholding tax interest in excess of 5% (5u withholding tax—[5%×50u high withholding tax interest]).	2.50u
7. Post-1986 foreign income taxes in Corporation B for 1992 (pre-dividend) (Line 2 plus [Line 4 minus Line 6 translated at the appropriate exchange rate]).	$100
8. Dividends paid out of post-1986 undistributed earnings to Corporation M in 1992	5u
9. Percentage of Corporation B's post-1986 undistributed earnings paid to Corporation M (Line 8 divided by Line 5)	5%
10. Foreign income taxes of Corporation B deemed paid by Corporation M under section 902(a) (Line 7 multiplied by Line 9)	$5
11. Total dividends paid out of post-1986 undistributed earnings of Corporation B to all shareholders in 1992	50u
12. Percentage of Corporation B's post-1986 undistributed earnings paid to all shareholders in 1992 (Line 11 divided by Line 5).	50%
13. Post-1986 foreign income taxes of Corporation B paid on or with respect to post-1986 undistributed earnings distributed to all shareholders in 1992 (Line 7 multiplied by Line 12).	$50
14. Corporation B's post-1986 undistributed earnings at start of 1993 (Line 5 minus Line 11)	50u
15. Corporation B's post-1986 foreign income taxes at start of 1993 (Line 7 minus Line 13)	$50

(ii) For 1992, as computed in *Example 1,* Corporation M is deemed to have paid $2 of the post-1986 foreign income taxes paid by Corporation A and includes $2 in gross income as a dividend under section 78. Both the income inclusion and the credit are subject to a separate limitation for dividends from Corporation A, a noncontrolled section 902 corporation. Corporation M also is deemed to have paid $5 of the post-1986 foreign income taxes paid by Corporation B and includes $5 in gross income as a deemed dividend under section 78. Both the income inclusion and the foreign taxes deemed paid are subject to a separate limitation for dividends from Corporation B, a noncontrolled section 902 corporation.

Example 3. (i) Since 1987, domestic corporation M has owned 50 percent of the one class of stock of foreign corporation A. The remaining 50 percent of Corporation A is owned by foreign corporation Z. For the same time period, Corporation A has owned 40 percent of the one class of stock of foreign corporation B, and Corporation B has owned 30 percent of the one class of stock of foreign corporation C. The remaining 60 percent of Corporation B is owned by foreign corporation Y, and the remaining 70 percent of Corporation C is owned by foreign corporation X. Corporations A, B, and C are not controlled foreign corporations. Corporations A, B, and C use the u as their functional currency, and 1u equals $1 at all relevant times. Corporation B uses a fiscal year ending June 30 as its taxable year; all other corporations use the calendar year as the taxable year. On February 1, 1992, Corporation C pays a 500u dividend out of post-1986 undistributed earnings, 150u to Corporation B and 350u to Corporation X. On February 15, 1992, Corporation B pays a 300u dividend out of post-1986 undistributed earnings computed as of the close of Corporation B's fiscal year ended June 30, 1992, 120u to Corporation A and 180u to Corporation Y. On August 15, 1992, Corporation A pays a 200u dividend out of post-1986 undistributed earnings, 100u to Corporation M and 100u to Corporation Z. In computing foreign taxes deemed paid by Corporations B and A, section 78 does not apply and Corporations B and A thus do not have to include the foreign taxes deemed paid in earnings and profits. See paragraph (c)(2)(ii) of this section. Foreign income taxes deemed paid by Corporations B, A and M, and the foreign corporations' opening balances in post-1986 undistributed earnings and post-1986 foreign income taxes for Corporation B's fiscal year beginning July 1, 1992, and Corporation C's and Corporation A's 1993 calendar years are computed as follows:

A. Corporation C (third-tier corporation):	
1. Assumed post-1986 undistributed earnings in Corporation C at start of 1992	1300u
2. Assumed post-1986 foreign income taxes in Corporation C at start of 1992	$500
3. Assumed pre-tax earnings and profits of Corporation C for 1992	500u
4. Assumed foreign income taxes paid or accrued in 1992	300u
5. Post-1986 undistributed earnings in Corporation C for 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4)	1500u
6. Post-1986 foreign income taxes in Corporation C for 1992 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates).	$800
7. Dividends paid out of post-1986 undistributed earnings of Corporation C to Corporation B in 1992	150u
8. Percentage of Corporation C's post-1986 undistributed earnings paid to Corporation B (Line 7 divided by Line 5)	10%
9. Foreign income taxes of Corporation C deemed paid by Corporation B under section 902(b)(2) (Line 6 multiplied by Line 8).	$80
10. Total dividends paid out of post-1986 undistributed earnings of Corporation C to all shareholders in 1992	500u
11. Percentage of Corporation C's post-1986 undistributed earnings paid to all shareholders in 1992 (Line 10 divided by Line 5).	33.33%
12. Post-1986 foreign income taxes paid with respect to post-1986 undistributed earnings distributed to all shareholders in 1992 (Line 6 multiplied by Line 11).	$266.66
13. Post-1986 undistributed earnings in Corporation C at start of 1993 (Line 5 minus Line 10)	1000u
14. Post-1986 foreign income taxes in Corporation C at start of 1993 (Line 6 minus Line 12)	$533.34
B. Corporation B (second-tier corporation):	
1. Assumed post-1986 undistributed earnings in Corporation B as of July 1, 1991	0
2. Assumed post-1986 foreign income taxes in Corporation B as of July 1, 1991	0
3. Assumed pre-tax earnings and profits of Corporation B for fiscal year ended June 30, 1992, (including 150u dividend from Corporation B).	1000u
4. Assumed foreign income taxes paid or accrued by Corporation B in fiscal year ended June 30, 1992	200u
5. Foreign income taxes of Corporation C deemed paid by Corporation B in its fiscal year ended June 30, 1992 (Part A, Line 9 of paragraph (i) of this Example 3).	$80
6. Post-1986 undistributed earnings in Corporation B for fiscal year ended June 30, 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4).	800u
7. Post-1986 foreign income taxes in Corporation B for fiscal year ended June 30, 1992 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates plus Line 5).	$280
8. Dividends paid out of post-1986 undistributed earnings of Corporation B to Corporation A on February 15, 1992	120u
9. Percentage of Corporation B's post-1986 undistributed earnings for fiscal year ended June 30, 1992, paid to Corporation A (Line 8 divided by Line 6).	15%
10. Foreign income taxes paid and deemed paid by Corporation B as of June 30, 1992, deemed paid by Corporation A under section 902(b)(1) (Line 7 multiplied by Line 9).	$42
11. Total dividends paid out of post-1986 undistributed earnings of Corporation B for fiscal year ended June 30, 1992	300u
12. Percentage of Corporation B's post-1986 undistributed earnings for fiscal year ended June 30, 1992, paid to all shareholders (Line 11 divided by Line 6).	37.5%
13. Post-1986 foreign income taxes paid and deemed paid with respect to post-1986 undistributed earnings distributed to all shareholders during Corporation B's fiscal year ended June 30, 1992 (Line 7 multiplied by Line 12).	$105
14. Post-1986 undistributed earnings in Corporation B as of July 1, 1992 (Line 6 minus Line 11)	500u
15. Post-1986 foreign income taxes in Corporation B as of July 1, 1992 (Line 7 minus Line 13)	$175
C. Corporation A (first-tier corporation):	
1. Assumed post-1986 undistributed earnings in Corporation A at start of 1992	250u
2. Assumed post-1986 foreign income taxes in Corporation A at start of 1992	$100
3. Assumed pre-tax earnings and profits of Corporation A for 1992 (including 120u dividend from Corporation B)	250u
4. Assumed foreign income taxes paid or accrued by Corporation A in 1992	100u
5. Foreign income taxes paid or deemed paid by Corporation B as of June 30, 1992, that are deemed paid by Corporation A in 1992 (Part B, Line 10 of paragraph (i) of this Example 3).	$42
6. Post-1986 undistributed earnings in Corporation A for 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4)	400u
7. Post-1986 foreign income taxes in Corporation A for 1992 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates plus Line 5).	$242
8. Dividends paid out of post-1986 undistributed earnings of Corporation A to Corporation M on August 15, 1992	100u
9. Percentage of Corporation A's post-1986 undistributed earnings paid to Corporation M in 1992 (Line 8 divided by Line 6).	25%
10. Foreign income taxes paid and deemed paid by Corporation A in 1992 that are deemed paid by Corporation M under section 902(a) (Line 7 multiplied by Line 9).	$60.50
11. Total dividends paid out of post-1986 undistributed earnings of Corporation A to all shareholders in 1992	200u

12. Percentage of Corporation A's post-1986 undistributed earnings paid to all shareholders in 1992 (Line 11 divided by Line 6).	50%
13. Post-1986 foreign income taxes paid and deemed paid by Corporation A with respect to post-1986 undistributed earnings distributed to all shareholders in 1992 (Line 7 multiplied by Line 12).	$121
14. Post-1986 undistributed earnings in Corporation A at start of 1993 (Line 6 minus Line 11)	200u
15. Post-1986 foreign income taxes in Corporation A at start of 1993 (Line 7 minus Line 13)	$121

(ii) Corporation M is deemed, under section 902(a) and paragraph (b) of this section, to have paid $60.50 of post-1986 foreign income taxes paid, or deemed paid, by Corporation A on or with respect to its post-1986 undistributed earnings (Part C, Line 10) and Corporation M includes that amount in gross income as a dividend under section 78. Both the income inclusion and the credit are subject to a separate limitation for dividends from Corporation A, a noncontrolled section 902 corporation.

Example 4. (i) Since 1987, domestic corporation M has owned 100 percent of the voting stock of controlled foreign corporation A, and Corporation A has owned 100 percent of the voting stock of controlled foreign corporation B. Corporations M, A and B use the calendar year as the taxable year. Corporations A and B are organized in the same foreign country and use the u as their functional currency. 1u equals $1 at all relevant times. Assume that all of the earnings of Corporations A and B are general limitation earnings and profits within the meaning of section 904(d)(2)(I), and that neither Corporation A nor Corporation B has any previously taxed income accounts. In 1992, Corporation B pays a dividend of 150u to Corporation A out of post-1986 undistributed earnings, and Corporation A computes an amount of foreign taxes deemed paid under section 902(b)(1). The dividend is not subpart F income to Corporation A because section 954(c)(3)(B)(i) (the same country dividend exception) applies. Pursuant to paragraph (c)(2)(ii) of this section, Corporation A is not required to include the deemed paid taxes in earnings and profits. Corporation A has no pre-1987 accumulated profits and a deficit in post-1986 undistributed earnings for 1992. In 1992, Corporation A pays a dividend of 100u to Corporation M out of its earnings and profits for 1992 (current earnings and profits). Under paragraph (b)(4) of this section, Corporation M is not deemed to have paid any of the foreign income taxes paid or deemed paid by Corporation A because Corporation A has a deficit in post-1986 undistributed earnings as of December 31, 1992, and the sum of its current plus accumulated profits is less than zero. Note that if instead of paying a dividend to Corporation A in 1992, Corporation B had made an additional investment of $150 in United States property under section 956, that amount would have been included in gross income by Corporation M under section 951(a)(1)(B) and Corporation M would have been deemed to have paid $50 of foreign income taxes paid by Corporation B. See sections 951(a)(1)(B) and 960. Foreign income taxes of Corporation B deemed paid by Corporation A and the opening balances in post-1986 undistributed earnings and post-1986 foreign income taxes for Corporation A and Corporation B for 1993 are computed as follows:

A. Corporation B (second-tier corporation):	
1. Assumed post-1986 undistributed earnings in Corporation B at start of 1992	200u
2. Assumed post-1986 foreign income taxes in Corporation B at start of 1992	$50
3. Assumed pre-tax earnings and profits of Corporation B for 1992	150u
4. Assumed foreign income taxes paid or accrued in 1992	50u
5. Post-1986 undistributed earnings in Corporation B for 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4)	300u
6. Post-1986 foreign income taxes in Corporation B for 1992 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates).	$100
7. Dividends paid out of post-1986 undistributed earnings of Corporation B to Corporation A in 1992	150u
8. Percentage of Corporation B's post-1986 undistributed earnings paid to Corporation A (Line 7 divided by Line 5)	50%
9. Foreign income taxes of Corporation B deemed paid by Corporation A under section 902(b)(1) (Line 6 multiplied by Line 8).	$50
10. Post-1986 undistributed earnings in Corporation B at start of 1993 (Line 5 minus Line 7)	150u
11. Post-1986 foreign income taxes in Corporation B at start of 1993 (Line 6 minus Line 9)	$50
B. Corporation A (first-tier corporation):	
1. Assumed post-1986 undistributed earnings in Corporation A at start of 1992	(200u)
2. Assumed post-1986 foreign income taxes in Corporation A at start of 1992	0
3. Assumed pre-tax earnings and profits of Corporation A for 1992 (including 150u dividend from Corporation B)	200u
4. Assumed foreign income taxes paid or accrued by Corporation A in 1992	40u
5. Foreign income taxes paid by Corporation B in 1992 that are deemed paid by Corporation A (Part A, Line 9 of paragraph (i) of this Example 4).	$50
6. Post-1986 undistributed earnings in Corporation A for 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4)	(40u)
7. Post-1986 foreign income taxes in Corporation A for 1992 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates plus Line 5).	$90
8. Dividends paid out of current earnings and profits of Corporation A for 1992	100u
9. Percentage of post-1986 undistributed earnings of Corporation A paid to Corporation M in 1992 (Line 8 divided by the greater of Line 6 or zero).	0
10. Foreign income taxes paid and deemed paid by Corporation A in 1992 that are deemed paid by Corporation M under section 902(a) (Line 7 multiplied by Line 9).	0
11. Post-1986 undistributed earnings in Corporation A at start of 1993 (line 6 minus line 8)	(140u)
12. Post-1986 foreign income taxes in Corporation A at start of 1993 (Line 7 minus Line 10)	$90

(ii) For 1993, Corporation A has 500u of earnings and profits on which it pays 160u of foreign income taxes. Corporation A receives no dividends from Corporation B, and pays a 100u dividend to Corporation M. The 100u dividend to Corporation M carries with it some of the foreign income taxes paid and deemed paid by Corporation A in 1992, which were not deemed paid by Corporation M in 1992 because Corporation A had no post-1986 undistributed earnings. Thus, for 1993, Corporation M is deemed to have paid $125 of post-1986 foreign income taxes paid and deemed paid by Corporation A and includes that amount in gross income as a dividend under section 78, determined as follows:

1. Post-1986 undistributed earnings in Corporation A at start of 1993	(140u)
2. Post-1986 foreign income taxes in Corporation A at start of 1993	$90
3. Pre-tax earnings and profits of Corporation A for 1993	500u
4. Foreign income taxes paid or accrued by Corporation A in 1993	160u
5. Post-1986 undistributed earnings in Corporation A for 1993 (pre-dividend) (Line 1 plus Line 3 minus Line 4)	200u
6. Post-1986 foreign income taxes in Corporation A for 1993 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates).	$250

7. Dividends paid out of post-1986 undistributed earnings of Corporation A to Corporation M in 1993	100u
8. Percentage of post-1986 undistributed earnings of Corporation A paid to Corporation M in 1993 (Line 7 divided by Line 5)	50%
9. Foreign income taxes paid and deemed paid by Corporation A that are deemed paid by Corporation M in 1993 (Line 6 multiplied by Line 8).	$125
10. Post-1986 undistributed earnings in Corporation A at start of 1994 (Line 5 minus Line 7)	100u
11. Post-1986 foreign income taxes in Corporation A at start of 1994 (Line 6 minus Line 9)	$125

Example 5. (i) Since 1987, domestic corporation M has owned 100 percent of the voting stock of controlled foreign corporation A. Corporation M also conducts operations through a foreign branch. Both Corporation A and Corporation M use the calendar year as the taxable year. Corporation A uses the u as its functional currency and 1u equals $1 at all relevant times. Corporation A has no subpart F income, as defined in section 952, and no increase in earnings invested in United States property under section 956 for 1992. Corporation A also has no previously taxed income accounts. Corporation A has general limitation income and high withholding tax interest income that, by operation of section 954(b)(4), does not constitute foreign base company income under section 954(a). Because Corporation A is a controlled foreign corporation, it is not required to reduce post-1986 foreign income taxes by foreign taxes paid or accrued with respect to high withholding tax interest in excess of 5 percent. See § 1.902–1(a)(8)(iii). Corporation A pays a 60u dividend to Corporation M in 1992. For 1992, Corporation M is deemed, under paragraph (b) of this section, to have paid $24 of the post-1986 foreign income taxes paid by Corporation A and includes that amount in gross income under section 78 as a dividend, determined as follows:

1. Assumed post-1986 undistributed earnings in Corporation A at start of 1992 attributable to:	
(a) Section 904(d)(1)(B) high withholding tax interest	20u
(b) Section 904(d)(1)(I) general limitation income	55u
2. Assumed post-1986 foreign income taxes in Corporation A at start of 1992 attributable to:	
(a) Section 904(d)(1)(B) high withholding tax interest	$5
(b) Section 904(d)(1)(I) general limitation income	$20
3. Assumed pre-tax earnings and profits of Corporation A for 1992 attributable to:	
(a) Section 904(d)(1)(B) high withholding tax interest	20u
(b) Section 904(d)(1)(I) general limitation income	20u
4. Assumed foreign income taxes paid or accrued in 1992 on or with respect to:	
(a) Section 904(d)(1)(B) high withholding tax interest	10u
(b) Section 904(d)(1)(I) general limitation income	5u
5. Post-1986 undistributed earnings in Corporation A for 1992 (pre-dividend) attributable to:	
(a) Section 904(d)(1)(B) high withholding tax interest (Line 1(a) + Line 3(a) minus Line 4(a))	30u
(b) Section 904(d)(1)(I) general limitation income (Line 1(b) + Line 3(b) minus Line 4(b))	70u
(c) Total	100u
6. Post-1986 foreign income taxes in Corporation A for 1992 (pre-dividend) attributable to:	
(a) Section 904(d)(1)(B) high withholding tax interest (Line 2(a) + Line 4(a) translated at the appropriate exchange rates)	$15
(b) Section 904(d)(1)(I) general limitation income (Line 2(b) + Line 4(b) translated at the appropriate exchange rates)	$25
7. Dividends paid to Corporation M in 1992	60u
8. Dividends paid to Corporation M in 1992 attributable to section 904(d) separate categories pursuant to § 1.904–5(d):	
(a) Dividends paid to Corporation M in 1992 attributable to section 904(d)(1)(B) high withholding tax interest (Line 7 multiplied by Line 5(a) divided by Line 5(c)).	18u
(b) Dividends paid to Corporation M in 1992 attributable to section 904(d)(1)(I) general limitation income (Line 7 multiplied by Line 5(b) divided by Line 5(c)).	42u
9. Percentage of Corporation A's post-1986 undistributed earnings for 1992 paid to Corporation M attributable to:	
(a) Section 904(d)(1)(B) high withholding tax interest (Line 8(a) divided by Line 5(a))	60%
(b) Section 904(d)(1)(I) general limitation income (Line 8(b) divided by Line 5(b))	60%
10. Foreign income taxes of Corporation A deemed paid by Corporation M under section 902(a) attributable to:	
(a) Foreign income taxes of Corporation A deemed paid by Corporation M under section 902(a) with respect to section 904(d)(1)(B) high withholding tax interest (Line 6(a) multiplied by Line 9(a)).	$9
(b) Foreign income taxes of Corporation A deemed paid by Corporation M under section 902(a) with respect to section 904(d)(1)(I) general limitation income (Line 6(b) multiplied by Line 9(b)).	$15
11. Post-1986 undistributed earnings in Corporation A at start of 1993 attributable to:	
(a) Section 904(d)(1)(B) high withholding tax interest (Line 5(a) minus Line 8(a))	12u
(b) Section 904(d)(1)(I) general limitation income (Line 5(b) minus Line 8(b))	28u
12. Post-1986 foreign income taxes in Corporation A at start of 1989 allocable to:	
(a) Section 904(d)(1)(B) high withholding tax interest (Line 6(a) minus Line 10(a))	$6
(b) Section 904(d)(1)(I) general limitation income (Line 6(b) minus Line 10(b))	$10

(ii) For purposes of computing Corporation M's foreign tax credit limitation, the post-1986 foreign income taxes of Corporation A deemed paid by Corporation M with respect to income in separate categories will be added to the foreign income taxes paid or accrued by Corporation M associated with income derived from Corporation M's branch operation in the same separate categories. The dividend (and the section 78 inclusion with respect to the dividend) will be treated as income in separate categories and added to Corporation M's other income, if any, attributable to the same separate categories. See section 904(d) and § 1.904–6.

(g) *Effective date.* This section applies to any distribution made in and after a foreign corporation's first taxable year beginning on or after January 1, 1987.

§ 1.902–2 Treatment of deficits in post-1986 undistributed earnings and pre-1987 accumulated profits of a first-, second-, or third-tier corporation for purposes of computing an amount of foreign taxes deemed paid under § 1.902–1.

(a) *Carryback of deficits in post-1986 undistributed earnings of a first-, second-, or third-tier corporation to pre-effective date taxable years*—(1) *Rule.* For purposes of computing foreign income taxes deemed paid under § 1.902–1(b) with respect to dividends paid by a first-, second-, or third-tier corporation, when there is a deficit in the post-1986 undistributed earnings of that corporation and the corporation makes a distribution to shareholders that is a dividend or would be a dividend if there were current or accumulated earnings and profits, then the post-1986 deficit shall be carried

back to the most recent pre-effective date taxable year of the first-, second-, or third-tier corporation with positive accumulated profits computed under section 902. See § 1.902–3(e). For purposes of this § 1.902–2, a pre-effective date taxable year is a taxable year beginning before January 1, 1987, or a taxable year beginning after December 31, 1986, if the special effective date of § 1.902–1(a)(13) applies. The deficit shall reduce the section 902 accumulated profits in the most recent preeffective date year to the extent thereof, and any remaining deficit shall be carried back to the next preceding year or years until the deficit is completely allocated. The amount carried back shall reduce the deficit in post-1986 undistributed earnings. Any foreign income taxes paid in a post-effective date year will not be carried back to preeffective date taxable years or removed from post-1986 foreign income taxes. See section 960 and the regulations under that section for rules governing the carryback of deficits and the computation of foreign income taxes deemed paid with respect to deemed income inclusions from controlled foreign corporations.

(2) *Examples.* The following examples illustrate the rules of this paragraph (a):

Example 1. (i) From 1985 through 1990, domestic corporation M owns 10 percent of the one class of stock of foreign corporation A. The remaining 90 percent of Corporation A's stock is owned by Z, a foreign corporation. Corporation A is not a controlled foreign corporation and uses the u as its functional currency. 1u equals $1 at all relevant times. Both Corporation A and Corporation M use the calendar year as the taxable year. Corporation A has pre-1987 accumulated profits and post-1986 undistributed earnings or deficits in post-1986 undistributed earnings, pays pre-1987 and post-1986 foreign income taxes, and pays dividends as summarized below:

Taxable year	1985	1986	1987	1988	1989	1990
Current E & P (Deficits) of Corp. A	150u	150u	(100u)	100u	0	0
Current Plus Accumulated E & P of Corp. A	150u	300u	200u	250u	250u	200u
Post-'86 Undistributed Earnings of Corp. A			(100u)	100u	100u	50u
Post-'86 Undistributed Earnings of Corp. A Reduced By Current Year Dividend Distributions (increased by deficit carryback).			0	100u	50u	50u
Foreign Income Taxes of Corp. A (Annual)	120u	120u	$10	$50	0	0
Post-'86 Foreign Income Taxes of Corp. A			$10	$60	$60	$30
12/31 Distributions to Corp. M	0	0	5u	0	5u	0
12/31 Distributions to Corp. Z	0	0	45u	0	45u	0

(ii) On December 31, 1987, Corporation A distributes a 5u dividend to Corporation M and a 45u dividend to Corporation Z. At that time Corporation A has a deficit of (100u) in post-1986 undistributed earnings and $10 of post-1986 foreign income taxes. The (100u) deficit (but not the post-1986 foreign income taxes) is carried back to offset the accumulated profits of 1986 and removed from post-1986 undistributed earnings. The accumulated profits for 1986 are reduced to 50u (150u − 100u). The dividend is paid out of the reduced 1986 accumulated profits. Foreign taxes deemed paid by Corporation M with respect to the 5u dividend are 12u (120u×(5u/50u)). See § 1.902–1(b)(3). Corporation M must include 12u in gross income (translated under the rule applicable to foreign income taxes paid on earnings accumulated in pre-effective date years) under section 78 as a dividend. Both the income inclusion and the foreign taxes deemed paid are subject to a separate limitation for dividends from Corporation A, a noncontrolled section 902 corporation. No accumulated profits remain in Corporation A with respect to 1986 after the carryback of the 1987 deficit and the December 31, 1987, dividend distributions to Corporations M and Z.

(iii) On December 31, 1989, Corporation A distributes a 5u dividend to Corporation M and a 45u dividend to Corporation Z. At that time Corporation A has 100u of post-1986 undistributed earnings and $60 of post-1986 foreign income taxes. Therefore, the dividend is considered paid out of Corporation A's post-1986 undistributed earnings. Foreign taxes deemed paid by Corporation M with respect to the 5u dividend are $3 ($60×5%[5u/100u]). Corporation M must include $3 in gross income under section 78 as a dividend. Both the income inclusion and the foreign taxes deemed paid are subject to a separate limitation for dividends from noncontrolled section 902 corporation A. Corporation A's post-1986 undistributed earnings as of January 1, 1990, are 50u (100u − 50u). Corporation A's post-1986 foreign income taxes must be reduced by the amount of foreign taxes that would have been deemed paid if both Corporations M and Z were eligible to compute an amount of deemed paid taxes. Section 1.902–1(a)(8)(i). The amount of foreign income taxes that would have been deemed paid if both Corporations M and Z were eligible to compute an amount of deemed paid taxes on the 50u dividend distributed by Corporation A is $30 ($60×50%[50u/100u]). Thus, post-1986 foreign income taxes as of January 1, 1990, are $30 ($60 − $30).

Example 2. The facts are the same as in *Example 1,* except that Corporation A has a deficit in its post-1986 undistributed earnings of (150u) on December 31, 1987. The deficit is carried back to 1986 and reduces accumulated profits for that year to -0-. Thus, the foreign income taxes paid with respect to the 1986 accumulated profits will never be deemed paid. The 1987 dividend is deemed to be out of Corporation A's 1985 accumulated profits. Foreign taxes deemed paid by Corporation M under section 902 with respect to the 5u dividend paid on December 31, 1987, are 4u (120u×5u/150u). See § 1.902–1(b)(3). As a result of the December 31, 1987, dividend distributions, 100u (150u − 50u) of accumulated profits and 80u (120u reduced by 40u[120u×50u/150u] of foreign taxes that would have been deemed paid had all of Corporation A's shareholders been eligible to compute an amount of foreign taxes deemed paid with respect to the dividend paid out of 1985 accumulated profits) remain in Corporation A with respect to 1985.

Example 3. (i) From 1986 through 1991, domestic corporation M owns 10 percent of the one class of stock of foreign corporation A. The remaining 90 percent of Corporation A's stock is owned by Corporation Z, a foreign corporation. Corporation A is not a controlled foreign corporation and uses the u as its functional currency. 1u equals $1 at all relevant times. Both Corporation A and Corporation M use the calendar year as the taxable year. Corporation A has pre-1987 accumulated profits and post-1986 undistributed earnings or deficits in post-1986 undistributed earnings, pays pre-1987 and post-1986 foreign income taxes, and pays dividends as summarized below:

Taxable year	1986	1987	1988	1989	1990	1991
Current E & P (Deficits) of Corp. A	100u	(50u)	150u	75u	25u	0
Current Plus Accumulated E & P of Corp. A	100u	50u	200u	175u	200u	80u
Post-'86 Undistributed Earnings of Corp. A		(50u)	100u	75u	100u	0
Post-'86 Undistributed Earnings of Corp. A Reduced By Current Year Dividend Distributions (increased by deficit carryback).		(50u)	0	75u	0	0
Foreign Income Taxes (Annual) of Corp. A	80u	0	$120	$20	$20	0

Post-'86 Foreign Income Taxes of Corp. A		0	$120	$20	$40	0
12/31 Distributions to Corp. M	0	0	10u	0	12u	0
12/31 Distributions to Corp. Z	0	0	90u	0	108u	0

(ii) On December 31, 1988, Corporation A distributes a 10u dividend to Corporation M and a 90u dividend to Corporation Z. At that time Corporation A has 100u in its post-1986 undistributed earnings and $120 in its post-1986 foreign income taxes. Corporation M is deemed, under § 1.902–1(b)(1), to have paid $12 ($120×10%[10u/100u]) of the post-1986 foreign income taxes paid by Corporation A and includes that amount in gross income under section 78 as a dividend. Both the income inclusion and the foreign taxes deemed paid are subject to a separate limitation for dividends from noncontrolled section 902 corporation A. Corporation A's post-1986 undistributed earnings as of January 1, 1989, are 0 (100u–100u). Its post-1986 foreign taxes as of January 1, 1989, also are 0, $120 reduced by $120 of foreign income taxes paid that would have been deemed paid if both Corporations M and Z were eligible to compute an amount of foreign taxes deemed paid on the dividend from Corporation A ($120×100%[100u/100u]).

(iii) On December 31, 1990, Corporation A distributes a 12u dividend to Corporation M and a 108u dividend to Corporation Z. At that time Corporation A has 100u in its post-1986 undistributed earnings and $40 in its post-1986 foreign income taxes. The dividend is paid out of post-1986 undistributed earnings to the extent thereof (100u), and the remainder of 20u is paid out of 1986 accumulated profits. Under § 1.902–1(b)(2), the 12u dividend to Corporation M is deemed to be paid out of post-1986 undistributed earnings to the extent of 10u (100u×12u/120u) and the remaining 2u is deemed to be paid out of Corporation A's 1986 accumulated profits. Similarly, the 108u dividend to Corporation Z is deemed to be paid out of post-1986 undistributed earnings to the extent of 90u (100u×108u/120u) and the remaining 18u is deemed to be paid out of Corporation A's 1986 accumulated profits. Foreign income taxes deemed paid by Corporation M under section 902 with respect to the portion of the dividend paid out of post-1986 undistributed earnings are $4 ($40×10%[10u/100u]), and foreign taxes deemed paid by Corporation M with respect to the portion of the dividend deemed paid out of 1986 accumulated profits are 1.6u (80u×2u/100u). Corporation M must include $4 plus 1.6u translated under the rule applicable to foreign income taxes paid on earnings accumulated in taxable years prior to the effective date of the Tax Reform Act of 1986 in gross income as a dividend under section 78. The income inclusion and the foreign income taxes deemed paid are subject to a separate limitation for dividends from noncontrolled section 902 Corporation A. As of January 1, 1991, Corporation A's post-1986 undistributed earnings are 0 (100u–100u). 80u (100u–20u) of accumulated profits remain with respect to 1986. Post-1986 foreign income taxes as of January 1, 1991, are 0, $40 reduced by $40 of foreign income taxes paid that would have been deemed paid if both Corporations M and Z were eligible to compute an amount of deemed paid taxes on the 100u dividend distributed by Corporation A out of post-1986 undistributed earnings ($40×100%[100u/100u]). Corporation A has 64u of foreign income taxes remaining with respect to 1986, 80u reduced by 16u [80u×20u/100u] of foreign income taxes that would have been deemed paid if Corporations M and Z both were eligible to compute an amount of deemed paid taxes on the 20u dividend distributed by Corporation A out of 1986 accumulated profits.

(b) *Carryforward of deficits in pre-1987 accumulated profits of a first-, second-, or third-tier corporation to post-1986 undistributed earnings for purposes of section 902*—(1) *General rule.* For purposes of computing foreign income taxes deemed paid under § 1.902–1(b) with respect to dividends paid by a first-, second-, or third-tier corporation out of post-1986 undistributed earnings, the amount of a deficit in accumulated profits of the foreign corporation determined under section 902 as of the end of its last pre-effective date taxable year is carried forward and reduces post-1986 undistributed earnings on the first day of the foreign corporation's first taxable year beginning after December 31, 1986, or on the first day of the first taxable year in which the ownership requirements of section 902(c)(3)(B) and § 1.902–1(a)(1) through (4) are met if the special effective date of § 1.902–1(a)(13) applies. Any foreign income taxes paid with respect to a pre-effective date year shall not be carried forward and included in post-1986 foreign income taxes. Post-1986 undistributed earnings may not be reduced by the amount of a pre-1987 deficit in earnings and profits computed under section 964(a). See section 960 and the regulations under that section for rules governing the carryforward of deficits and the computation of foreign income taxes deemed paid with respect to deemed income inclusions from controlled foreign corporations. For translation rules governing carryforwards of deficits in pre-1987 accumulated profits to post-1986 taxable years of a foreign corporation with a dollar functional currency, see § 1.985–6(d)(2).

(2) *Effect of pre-effective date deficit.* If a foreign corporation has a deficit in accumulated profits as of the end of its last pre-effective date taxable year, then the foreign corporation cannot pay a dividend out of preeffective date years unless there is an adjustment made (for example, a refund of foreign taxes paid) that restores section 902 accumulated profits to a pre-effective date taxable year or years. Moreover, if a foreign corporation has a deficit in section 902 accumulated profits as of the end of its last pre-effective date taxable year, then no deficit in post-1986 undistributed earnings will be carried back under paragraph (a) of this section. For rules concerning carrybacks of eligible deficits from post-1986 undistributed earnings to reduce pre-1987 earnings and profits computed under section 964(a), see section 960 and the regulations under that section.

(3) *Examples.* The following examples illustrate the rules of this paragraph (b):

Example 1. (i) From 1984 through 1988, domestic corporation M owns 10 percent of the one class of stock of foreign corporation A. The remaining 90 percent of Corporation A's stock is owned by Corporation Z, a foreign corporation. Corporation A is not a controlled foreign corporation and uses the u as its functional currency. 1u equals $1 at all relevant times. Both Corporation A and Corporation M use the calendar year as the taxable year. Corporation A has pre-1987 accumulated profits or deficits in accumulated profits and post-1986 undistributed earnings, pays pre-1987 and post-1986 foreign income taxes, and pays dividends as summarized below:

Taxable year	1984	1985	1986	1987	1988
Current E & P (Deficits) of Corp. A	25u	(100u)	(25u)	200u	100u
Current Plus Accumulated E & P (Deficits) of Corp. A	25u	(75u)	(100u)	100u	50u
Post-'86 Undistributed Earnings of Corp. A				100u	50u
Post-'86 Undistributed Earnings of Corp. A Reduced By Current Year Dividend Distributions (reduced by deficit carryforward).				(50u)	50u
Foreign Income Taxes (Annual) of Corp. A	20u	5u	0	$100	$50
Post-'86 Foreign Income Taxes of Corp. A				$100	$50
12/31 Distributions to Corp. M	0	0	0	15u	0
12/31 Distributions to Corp. Z	0	0	0	135u	0

(ii) On December 31, 1987, Corporation A distributes a 150u dividend, 15u to Corporation M and 135u to Corporation Z. Corporation A has 200u of current earnings and profits for 1987, but its post-1986 undistributed earnings are only 100u as a result of the reduction for pre-1987 accumulated deficits required under paragraph (b)(1) of this section. Corporation A has $100 of post-1986 foreign income taxes. Only 100u of the 150u distribution is a dividend out of post-1986 undistributed earnings. Foreign income taxes deemed paid by Corporation M in 1987 with respect to the 10u dividend attributable to post-1986 undistributed earnings, computed under § 1.902–1(b), are $10 ($100×10%[10u/100u]). Corporation M includes this amount in gross income under section 78 as a dividend. Both the income inclusion and the foreign taxes deemed paid are subject to a separate limitation for dividends from noncontrolled section 902 corporation A. After the distribution, Corporation A has (50u) of post-1986 undistributed earnings (100u–150u) and -0- post-1986 foreign income taxes, $100 reduced by $100 of foreign income taxes paid that would have been deemed paid if both Corporations M and Z were eligible to compute an amount of deemed paid taxes on the 100u dividend distributed by Corporation A out of post-1986 undistributed earnings ($100×100%[100u/100u]).

(iii) The remaining 50u of the 150u distribution cannot be deemed paid out of accumulated profits of a pre-1987 year because Corporation A has an accumulated deficit as of the end of 1986 that eliminated all pre-1987 accumulated profits. See paragraph (b)(2) of this section. The 50u is a dividend out of current earnings and profits under section 316(a)(2), but Corporation M is not deemed to have paid any additional foreign income taxes paid by Corporation A with respect to that 50u dividend out of current earnings and profits. See § 1.902–1(b)(4).

Example 2. (i) From 1986 through 1991, domestic corporation M owns 10 percent of the one class of stock of foreign corporation A. The remaining 90 percent of Corporation A's stock is owned by Corporation Z, a foreign corporation. Corporation A is not a controlled foreign corporation and uses the u as its functional currency. 1u equals $1 at all relevant times. Both Corporation A and Corporation M use the calendar year as the taxable year. Corporation A has pre-1987 accumulated profits or deficits in accumulated profits and post-1986 undistributed earnings, pays post-1986 foreign income taxes, and pays dividends as summarized below:

Taxable year	1986	1987	1988	1989	1990
Current E & P (Deficits) of Corp. A	(100u)	150u	(150u)	100u	250u
Current Plus Accumulated E & P (Deficits) of Corp. A	(100u)	50u	(200u)	(100u)	50u
Post-'86 Undistributed Earnings of Corp. A		50u	(200u)	(100u)	50u
Post-'86 Undistributed Earnings of Corp. A Reduced By Current Year Dividend Distributions (reduced by deficit carryforward).		(50u)	(200u)	(200u)	0
Foreign Income Taxes (Annual) of Corp. A	0	$120	0	$50	$100
Post-'86 Foreign Income Taxes of Corp. A		$120	0	$50	$150
12/31 Distributions to Corp. M	0	10u	0	10u	5u
12/31 Distributions to Corp. Z	0	90u	0	90u	45u

(ii) On December 31, 1987, Corporation A distributes a 10u dividend to Corporation M and a 90u dividend to Corporation Z. At the time of the distribution, Corporation A has 50u of post-1986 undistributed earnings and 150u of current earnings and profits. Thus, 50u of the dividend distribution (5u to Corporation M and 45u to Corporation Z) is a dividend out of post-1986 undistributed earnings. The remaining 50u is a dividend out of current earnings and profits under section 316(a)(2), but Corporation M is not deemed to have paid any additional foreign income taxes paid by Corporation A with respect to that 50u dividend out of current earnings and profits. See § 1.902–1(b)(4). Note that even if there were no current earnings and profits in Corporation A, the remaining 50u of the 100u distribution cannot be deemed paid out of accumulated profits of a pre1987 year because Corporation A has an accumulated deficit as of the end of 1986 that eliminated all pre-1987 accumulated profits. See paragraph (b)(2) of this section. Corporation A has $120 of post-1986 foreign income taxes. Foreign taxes deemed paid by Corporation M under section 902 with respect to the 5u dividend out of post-1986 undistributed earnings are $12 ($120×10%[5u/50u]). Corporation M includes this amount in gross income as a dividend under section 78. Both the foreign taxes deemed paid and the deemed dividend are subject to a separate limitation for dividends from noncontrolled section 902 corporation A. As of January 1, 1988, Corporation A has (50u) in its post-1986 undistributed earnings (50u − 100u) and -0- in its post-1986 foreign income taxes, $120 reduced by $120 of foreign taxes that would have been deemed paid if both Corporations M and Z were eligible to compute an amount of deemed paid taxes on the dividend distributed by Corporation A out of post-1986 undistributed earnings ($120×100%[50u/50u]).

(iii) On December 31, 1989, Corporation A distributes a 10u dividend to Corporation M and a 90u dividend to Corporation Z. Although the distribution is considered a dividend in its entirety out of 1989 earnings and profits pursuant to section 316(a)(2), post-1986 undistributed earnings are (100u). Accordingly, for purposes of section 902, Corporation M is deemed to have paid no post-1986 foreign income taxes. See § 1.902–1(b)(4). Corporation A's post-1986 undistributed earnings as of January 1, 1990, are (200u) ((100u) − 100u). Corporation A's post-1986 foreign income taxes are not reduced because no taxes were deemed paid.

(iv) On December 31, 1990, Corporation A distributes a 5u dividend to Corporation M and a 45u dividend to Corporation Z. At that time Corporation A has 50u of post-1986 undistributed earnings, and $150 of post-1986 foreign income taxes. Foreign taxes deemed paid by Corporation M under section 902 with respect to the 5u dividend are $15 ($150×10%[5u/50u]). Post-1986 undistributed earnings as of January 1, 1991, are -0- (50u − 50u). Post-1986 foreign income taxes as of January 1, 1991, also are -0-, $150 reduced by $150 ($150×100%[50u/50u]) of foreign income taxes that would have been deemed paid if both Corporations M and Z were eligible to compute an amount of deemed paid taxes on the 50u dividend.

Par. 4. Newly designated § 1.902–3 is amended by revising the section heading and paragraph (a) introductory text, and by designating the last paragraph as paragraph (l) and revising it to read as follows:

§ 1.902–3 Credit for domestic corporate shareholder of a foreign corporation for foreign income taxes paid with respect to accumulated profits of taxable years of the foreign corporation beginning before January 1, 1987.

(a) *Definitions.* For purposes of section 902 and §§ 1.902–3 and 1.902–4:

* * * * *

(l) *Effective date.* Except as provided in § 1.902–4, this section applies to any distribution received from a first-tier corporation by its domestic shareholder after December 31, 1964, and before the beginning of the foreign corporation's first taxable year beginning after December 31, 1986. If, however, the first day on which the ownership requirements of section 902(c)(3)(B) and § 1.902–1(a)(1) through (4) are met with respect to the foreign corporation is in a taxable year of the foreign corporation beginning after December 31, 1986, then this section shall apply to all taxable years beginning after December 31, 1964, and before the year in which the ownership requirements are first met. See § 1.902–1(a)(13)(iii). For corresponding rules applicable to distributions received by the domestic shareholder prior to January 1, 1965, see § 1.902–5 as contained in the 26 CFR part 1 edition revised April 1, 1976.

§ 1.902–4 [Amended]

Par. 5. Newly designated § 1.902–4, paragraph (b), in the last sentence, the

language ''§ 1.902–1'' is removed and ''§ 1.902–3'' is added in its place.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. In § 602.101, paragraph (c) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(c) * * *

CFR part of section where identified and described	Current OMB control No.
* * * * *	
1.902–1	1545–1458
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 12, 1996.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 97–153 Filed 1–6–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 220

Collection From Third Party Payers of Reasonable Costs of Healthcare Services

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule; amendment.

SUMMARY: The Department of Defense published a final rule concerning Collection From Third Party Payers of Reasonable Costs of Healthcare Services. This part is published to suspend the effectiveness of 32 CFR 220.8(k)(2). The effective date initially established for this change was June 1, 1996. Due to unanticipated administrative requirements that extended the timeframe for implementation, this effective date is now suspended until April 1, 1997.

DATES: Effective January 7, 1997, section 220.8(k)(2), as published at 61 FR 6542, February 21, 1996, is suspended until April 1, 1997.

FOR FURTHER INFORMATION CONTACT: LCDR Patrick Kelly, (703) 681–8910.

SUPPLEMENTARY INFORMATION: The amendment published on February 21, 1996, was not self-implementing. Rather, implementation required a change in billing practices by military treatment facilities and TRICARE resource sharing providers. Due to unanticipated administrative requirements that extended the timeframe for implementation, the changes in billing practices were suspended briefly. In view of these circumstances, the solicitation of additional public comment prior to establishing a deferred effective date is unnecessary.

List of Subjects in 32 CFR Part 220

Claims, Health care, Health insurance.

For the reasons stated in the preamble, 32 CFR part 220 is amended as follows:

PART 220—COLLECTION FROM THIRD PARTY PAYERS OF REASONABLE COSTS OF HEALTHCARE SERVICES

1. The authority citation for 32 CFR Part 220 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 1095.

2. The last sentence of paragraph 220.8(k)(2) is revised to read as follows:

§ 220.8 Reasonable costs.

* * * * *

(k) * * *

(2) * * * This paragraph (k)(2) becomes effective April 1, 1997.

* * * * *

Dated: December 31, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–163 Filed 1–6–97; 8:45 am]

BILLING CODE 5000–04–M

Proposed Rules

Federal Register
Vol. 62, No. 4
Tuesday, January 7, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV–96–985–4 PR]

Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1997–98 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1997–98 marketing year. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market.

DATES: Comments must be received by February 6, 1997.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, D.C. 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2043; Fax: (503) 326–7440; or Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–5127; Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah). This marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1997–98 marketing year, which begins on June 1, 1997. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 1997–98 marketing year at its October 2, 1996, meeting, and reconfirmed its recommendation following review of additional information at its meeting held on November 14, 1996. The Committee recommended the establishment of a salable quantity and allotment percentage for Scotch spearmint oil with one member opposing the motion because he favored the establishment of a higher salable quantity and allotment percentage. In a unanimous vote, the Committee recommended the establishment of a salable quantity and allotment percentage for Native spearmint oil.

This proposed rule would establish a salable quantity of 996,522 pounds and an allotment percentage of 55 percent for Scotch spearmint oil, and a salable quantity of 1,125,351 pounds and an allotment percentage of 56 percent for Native spearmint oil. This proposed rule would limit the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 1997–98 marketing year, which begins on June 1, 1997. Salable quantities and allotment percentages have been placed into effect each season since the marketing order's inception in 1980.

The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order accounts for approximately 75 percent of the annual U.S. production of both classes of spearmint oil.

When the order became effective in 1980, the United States produced nearly 100 percent of the world's supply of Scotch spearmint oil, of which approximately 80 percent was produced

in the regulated production area in the Far West. International production characteristics have changed in recent years, however, with foreign Scotch spearmint oil production contributing significantly to world production. Although still a leader in production, the Far West's market share has decreased to approximately 65 percent of the world total. Thus, in recent marketing years, the Committee has taken a different approach in its method of addressing the historical fluctuations in supply and price. In conjunction with the goal of maintaining price and market stability, the Committee seeks a moderate growth rate in terms of total North American market share. The Committee's recommendation is intended to find a stable price level while keeping Far West Scotch spearmint oil in a competitive and viable position in the international market. To that end, the Committee is targeting a specific percentage of the North American market share for use in its salable quantity and allotment percentage calculations. For 1997–98, the Committee is targeting 73 percent of the North American market, compared to the nearly 65 percent targeted for the 1996–97 season. Preliminary figures indicate that the Far West Scotch spearmint oil market share in North America will reach approximately 60 percent in 1996–97, up from 55 percent in 1995–96.

Records show that the marketing order has contributed extensively to the stabilization of grower prices, which prior to 1980 experienced wide fluctuations from year to year. Prior to 1980, grower prices for Native spearmint oil were historically cyclical. For example, between 1971 and 1975 the price of Native spearmint oil increased from $3.00 per pound to $11.00 per pound. In contrast, under the marketing order, prices have stabilized between $10.50 and $11.50 per pound for the past ten years. With approximately 90 percent of U.S. production of Native spearmint oil located in the Far West, the method of calculating the Native spearmint oil salable quantity and allotment percentage primarily utilizes information on price and available supply as they are affected by the estimated trade demand for Far West Native spearmint oil.

The proposed salable quantity and allotment percentage for each class of spearmint oil for the 1997–98 marketing year is based upon the Committee's recommendation and the data presented below.

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 1997—309,927 pounds. This figure is derived by subtracting the estimated 1996–97 marketing year trade demand of 900,000 pounds from the revised 1996–97 marketing year total available supply of 1,209,927 pounds.

(B) Estimated North American production (U.S. and Canada) for the 1997–98 marketing year—1,511,461 pounds. This figure is an estimate based on information provided to the Committee by producers and buyers.

(C) Percentage of North American market targeted—73 percent. This figure is an approximate average of the recommended target percentages made at each of the five regional producer meetings held throughout the Far West production area during the month of September, 1996.

(D) Total quantity of Scotch spearmint oil needed to reach targeted percentage—1,103,367 pounds. This figure is the product of the estimated 1997–98 North American production and the targeted percentage.

(E) Minimum amount desired to have on hand throughout the season—200,000 pounds. Producers at all of the five regional meetings had recommended this amount, which continues to reflect the Committee's commitment to regain market share by maintaining a minimum quantity on hand.

(F) Total supply required—1,303,367 pounds. This figure is derived by adding the minimum desired on hand amount to the total quantity required to meet the targeted percentage.

(G) Additional quantity required—993,440 pounds. This figure represents the actual amount of additional or new oil needed to meet the Committee's projections, and is computed by subtracting the estimated carry-in of 309,440 pounds from the total supply required of 1,303,367 pounds.

(H) Total allotment base for the 1997–98 marketing year—1,811,859 pounds.

(I) Computed allotment percentage—54.8 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(J) Recommended allotment percentage—55 percent. This is the Committee's recommendation based on the computed allotment percentage.

(K) The Committee's recommended salable quantity—996,522 pounds. This figure is the product of the recommended allotment percentage and the total 1997–98 allotment base.

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 1997—71,764 pounds. This figure is derived by subtracting the estimated 1996–97 marketing year trade demand of 1,162,500 pounds from the revised 1996–97 marketing year total available supply of 1,234,264 pounds.

(B) Estimated trade demand (domestic and export) for the 1997–98 marketing year—1,212,500 pounds. This figure represents an average of buyer estimates and the amounts recommended at the regional producer meetings.

(C) Salable quantity required from 1997 production—1,140,736 pounds. This figure is the difference between the estimated 1997–98 marketing year trade demand and the estimated carry-in on June 1, 1997.

(D) Total allotment base for the 1997–98 marketing year—2,009,556 pounds.

(E) Computed allotment percentage—56.8 percent. This percentage is computed by dividing the required salable quantity by the total allotment base.

(F) Recommended allotment percentage—56 percent. This is the Committee's recommendation based on the computed allotment percentage.

(G) The Committee's recommended salable quantity—1,125,351 pounds. This figure is the product of the recommended allotment percentage and the total 1997–98 marketing year allotment base.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch spearmint oil salable quantity of 996,522 pounds and allotment percentage of 55 percent are based on anticipated supply, demand, and a targeted percentage of the North American market during the 1997–98 marketing year. The Committee's recommended Native spearmint oil salable quantity of 1,125,351 pounds and allotment percentages of 56 percent are based on anticipated supply and trade demand during the 1997–98 marketing year. The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce

more than their annual allotments during the 1997–98 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This proposed regulation, if adopted, would be similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this proposed action are expected to be offset by the benefits derived from a stable market, a greater market share, and possible improved returns. In conjunction with the issuance of this proposed rule, the Committee's marketing policy statement for the 1997–98 marketing year has been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of the provisions as set forth in 7 CFR Part 985.50. Conformity with other USDA guidelines has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs based on historical sales, changes and trends in production and demand, and information available to the Committee. Adoption of this proposed rule would also provide spearmint oil producers with information on the amount of oil which should be produced for next season.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 8 spearmint oil handlers subject to regulation under the marketing order and approximately 250 producers of spearmint oil in the regulated production area. Of the 250 producers, approximately 135 producers hold Class 1 (Scotch) oil allotment base, and approximately 115 producers hold Class 3 (Native) oil allotment base. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint for weed, insect, and disease control. A normal spearmint producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint producing farm would thus have to have considerable more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint production, most spearmint producing farms would fall into the category of large businesses.

Based on the Small Business Administration's definition of small entities, the Committee estimates that none of the eight handlers regulated by the order would be considered small entities as all are national and multinational corporations involved in the buying and selling of essential oils and the products of such essential oils. The Committee also estimates that 17 of the 135 Scotch spearmint oil producers and 10 of the 115 Native spearmint oil producers would be classified as small entities. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1997–97 marketing year. The committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market. This action is authorized by the provisions of sections 985.50, 985.51 and 985.52 of the order.

The small spearmint oil producers generally are not extensively diversified and as such are more at risk to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because incomes from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

Records show that the marketing order has contributed extensively to the stabilization of grower prices, which prior to 1980 experienced wide fluctuations from year to year. Prior to 1980, grower prices for Native spearmint oil were historically cyclical. For example, between 1971 and 1975 the price of Native spearmint oil increased from $3.00 per pound to $11.00 per pound. In contrast, under the marketing order, prices have stabilized between $10.50 and $11.50 per pound for the past ten years.

Alternatives to this proposal included not regulating the handling of spearmint oil during the 1997–98 marketing year, and recommending either higher or lower salable quantities and allotment percentages. The Committee reached its recommendation to establish salable quantities and allotment percentages for both classes of oil after careful consideration of all available information, and believe that the levels recommended will achieve the objectives sought. Without any regulations in effect, the Committee believes the industry would return to the pattern of cyclical prices of prior years, as well as suffer the potentially price depressing consequence that a release of the nearly 1,300,000 pounds of spearmint oil reserves would have on the market. According to the Committee, higher or lower salable quantities and allotment percentages would not achieve the intended balance between market and price stability and market share maintenance and growth.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicitous

information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Finally, the Committee's meetings were widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Interested persons are also invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.216 is added to read as follows:

[Note: This section will not appear in the Code of Federal Regulations.]

§ 985.216 Salable quantities and allotment percentages—1997–98 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1997, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 996,522 pounds and an allotment percentage of 55 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,125,351 pounds and an allotment percentage of 56 percent.

Dated: December 31, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–281 Filed 1–6–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–215–AD]

Airworthiness Directives; Boeing Model 737–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737–100 and –200 series airplanes, that currently requires various inspections for cracks in the outboard chord of the frame at body station (BS) 727 and in the outboard chord of stringer 18A; and repair or replacement of cracked parts. That AD was prompted by reports of fatigue cracks in those outboard chords. This action would add inspections for certain airplanes, and would revise certain compliance times for all airplanes. The actions specified by the proposed AD are intended to detect and correct fatigue cracking, which could result in reduced structural integrity of the outboard chords, and subsequent rapid decompression of the airplane.

DATES: Comments must be received by February 18, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–215–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Della Swartz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2785; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–215–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–215–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 5, 1995, the FAA issued AD 95–12–17, amendment 39–9268 (60 FR 36981, July 19, 1995), applicable to certain Boeing Model 737–100 and –200 series airplanes, to require various inspections for cracks in the outboard chord of the frame at body station (BS) 727 and in the outboard chord of stringer 18A; and repair or replacement of cracked parts. That AD also provides for an optional terminating action for the required inspections. That action was prompted by reports of fatigue cracks in those outboard chords. The requirements of that AD are intended to detect and correct such fatigue cracking, which could result in reduced structural integrity of the outboard chords, and subsequent rapid decompression of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has become aware that certain airplanes that should be subject to the requirements of that AD were omitted inadvertently. At the time AD 95–12–17 was issued, the Boeing service bulletins cited in the AD did not describe initial or repetitive inspections for unmodified airplanes that had accumulated less than 27,000 total flight cycles. The FAA has determined that airplanes that have accumulated less than 27,000 total flight cycles as of August 18, 1995, (the effective date of AD 95–12–17) are subject to the addressed unsafe condition. The FAA finds that these airplanes also must be inspected to detect cracking in the outboard chords in order to address the identified unsafe condition in a timely manner.

Additionally, several operators have expressed their concern with the complexity of the compliance times of AD 95–12–17. The operators have advised the FAA that the currently required ''progressive'' or ''sliding'' compliance times are difficult to track and to schedule. These operators maintain that the complexity of the compliance times, in itself, will increase the risk and likelihood of a missed inspection occurring because of an inadvertent scheduling oversight.

The FAA acknowledges the commenters' concern. Since the issuance of AD 95–12–17, the FAA has held further discussions with the manufacturer in an effort to clarify and simplify the compliance times. For airplanes on which the upper outboard chord has been replaced, the compliance times of this proposal reflect a revised initial threshold of ''prior to the accumulation of 50,000 flight cycles since replacement of the upper outboard chord, or within 4,500 flight cycles as of the effective date of this AD, whichever occurs later.'' For all other airplanes, the compliance times of this proposal reflect a revised initial threshold of ''prior to the accumulation of 50,000 total flight cycles, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later.'' The repetitive inspections would be required at intervals not to exceed 4,500 flight cycles for all affected airplanes. The FAA has determined that the revised compliance times will address the unsafe condition in a timely manner.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95–12–17 to continue to require various inspections to detect cracking in the outboard chord of the frame at BS 727 and in the outboard chord of stringer 18A; and repair or replacement of cracked parts. This action would add inspections for certain airplanes. This action also would revise the threshold for accomplishment of the initial inspection and would revise the repetitive inspection interval for all affected airplanes. This action also continues to provide for an optional terminating action for the required inspections. The actions would be required to be accomplished in accordance with Boeing Alert Service Bulletin 737–53A1166, which is cited in AD 95–12–17 as the appropriate source of service information.

Cost Impact

There are approximately 999 Model 737–100 and –200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 296 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 95–12–17 take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $71,040, or $240 per airplane, per inspection cycle.

This proposed AD specifies inspection requirements for airplanes that were omitted inadvertently from the existing AD. However, the costs associated with the inspections for those airplanes were included previously in the cost impact on U.S. operators for accomplishment of AD 95–12–17. Therefore, the FAA estimates that no additional costs would be required for accomplishment of the proposed requirements of this AD.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action that will be provided by this AD action, it will take approximately 50 work hours to accomplish it, at an average labor rate of $60 per work hour. Required parts will cost approximately $3,680 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $6,680 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9268 (60 FR 36981, July 19, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 95–NM–215–AD. Supersedes AD 95–12–17, Amendment 39–9268.

Applicability: Model 737–100 and –200 series airplanes; line numbers 1 through 999 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance

of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking, which could result in reduced structural integrity of the outboard chords, and subsequent rapid decompression of the airplane, accomplish the following:

(a) For airplanes on which the body station (BS) 727 frame upper outboard chord has been replaced in accordance with Boeing Service Bulletin 737–53–1088: Prior to the accumulation of 50,000 flight cycles since replacement of the upper outboard chord, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later, perform close visual, pulse echo shear wave (PESW), and high frequency eddy current (HFEC) inspections to detect cracks in the outboard chord of the frame at BS 727 and in the outboard chord of stringer 18A. Perform the inspections in accordance with Part I of the Accomplishment Instructions of either Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995. Thereafter, repeat these inspections at intervals not to exceed 4,500 flight cycles.

(b) For airplanes on which the BS 727 frame outboard chord has not been replaced or on which only the lower outboard chord has been replaced in accordance with Boeing Service Bulletin 737–53–1088: Prior to the accumulation of 50,000 total flight cycles, or within 4,500 flight cycles after the effective date of this AD, whichever occurs later, perform close visual, PESW, and HFEC inspections to detect cracks in the outboard chord of the frame at BS 727 and in the outboard chord of stringer 18A. Perform the inspections in accordance with Part I of the Accomplishment Instructions of either Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995. Thereafter, repeat these inspections at intervals not to exceed 4,500 flight cycles.

(c) If any crack is found in the outboard chord of stringer 18A during any inspection required by this AD, prior to further flight, repair in accordance with either paragraph (c)(1) or (c)(2) of this AD.

(1) Repair in accordance with Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995; or

(2) Repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, (ACO) FAA, Transport Airplane Directorate.

(d) If any crack is found in the outboard chord of the frame at BS 727 during any inspection required by this AD: Accomplish paragraph (d)(1) or (d)(2) of this AD, as applicable, in accordance with either Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994; or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995. Thereafter, repeat the inspections required by either paragraph (a) or (b) of this AD, as applicable, at intervals not to exceed 4,500 flight cycles.

(1) If any crack extends from the forward edge of the chord or from the forward fastener hole, but does not extend past the second fastener hole, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) of this AD.

(i) Prior to further flight, install the time-limited repair. Prior to the accumulation of 4,500 flight cycles or within 18 months after accomplishment of the repair, whichever occurs first, replace the outboard chord. Or

(ii) Prior to further flight, replace the outboard chord.

Note 2: Boeing Alert Service Bulletin 737–53A1166 references Boeing Service Bulletin 737–53–1088 as an additional source of service information for procedures to replace the chord.

(2) If any crack extends from the forward edge of the chord, or from the forward fastener hole, and extends past the second fastener hole, prior to further flight, replace the outboard chord in accordance with either the original issue or Revision 1 of the service bulletin.

(e) Accomplishment of the following actions in accordance with either Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994, or Boeing Service Bulletin 737–53A1166, Revision 1, dated May 25, 1995, constitutes terminating action for the requirements of this AD.

(1) For airplanes on which no crack is found: Install the preventative modification in accordance with either the original issue or Revision 1 of the service bulletin.

(2) For airplanes on which any crack is found: Prior to further flight, replace the cracked chord and install the preventative modification in accordance with either the original issue or Revision 1 of the service bulletin.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 31, 1996.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–254 Filed 1–6–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–207–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–300, –400, and –500 series airplanes. This proposal would require interchanging the location of the hydraulic fuse and the flow limiter of the standby hydraulic system of the leading edge. The proposed AD also would require replacing the existing hydraulic fuses in the standby hydraulic system with new fuses. This proposal is prompted by reports of a performance test of the hydraulic fuses, which revealed that the positioning of the flow limiter in the existing configuration, and excessive fusing volumes of some of the fuses, can adversely affect the operation of the fuse. The actions specified by the proposed AD are intended to prevent such adversely affected operation of the fuse, which could result in the loss of all hydraulic system pressure and consequent severely reduced controllability of the airplane.

DATES: Comments must be received by February 18, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–207–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2673; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–207–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–207–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA received a report indicating that a performance test of the fuses in the hydraulic systems of certain Boeing Model 737 series airplanes was conducted. Results of that performance test revealed that, in the existing configuration, the flow limiter of the standby hydraulic system of the leading edge is positioned upstream of the hydraulic fuse. Such positioning of the flow limiter can adversely affect the operation of the fuse.

The FAA also received a report indicating that certain fuses installed in the standby hydraulic system exceed specified ''fusing volumes'' (the fluid volume allowed to pass through the fuse before it shuts off) at low hydraulic fluid temperatures. This condition also can adversely affect the operation of the fuse. The fuses in hydraulic systems A and B are not affected by this condition. However, the fuses in the standby hydraulic system are affected, since they are exposed to low temperatures because of the intermittent operation of the standby system.

The standby hydraulic system provides a backup system after the pressure of either (or both) the A or B hydraulic system drops below a minimum pressure setting. The hydraulic fuse is designed to prevent total loss of the hydraulics systems after a certain volume of fluid passes through the fuse within a specified time following the development of a leak downstream of the fuse. The hydraulic fuse also allows part of the hydraulic system to remain pressurized if such a leak develops. If the A and B hydraulic systems fail, and the standby hydraulic system develops a leak downstream of a failed fuse, the airplane could lose all hydraulic system pressure. This condition, if not corrected, could result in severely reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–29–1070, dated June 8, 1995, which describes procedures for interchanging the location of the hydraulic fuse and the flow limiter of the standby hydraulic system of the leading edge so that the hydraulic fuse is positioned upstream of the flow limiter. Accomplishment of this action will ensure normal operation of the hydraulic fuse.

The FAA also has reviewed and approved Boeing Service Bulletin 737–29–1071, dated May 16, 1996, which describes procedures for replacing the existing hydraulic fuses in the standby hydraulic system with new fuses that are not affected by low temperature operation. Installation of these new fuses will prevent the possible loss of the standby hydraulic system as a result of fluid depletion if a leak occurs downstream of the fuses.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require interchanging the location of the hydraulic fuse and the flow limiter of the standby hydraulic system of the leading edge so that the hydraulic fuse is positioned upstream of the flow limiter. The proposed AD also would require replacing the existing hydraulic fuses in the standby hydraulic system with new fuses that are not affected by low temperature operation. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Cost Impact

There are approximately 1,791 Boeing Model 737–300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 596 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 2 work hours per airplane to accomplish the proposed interchange of the hydraulic fuse and the flow limiter, and that the average labor rate is $60 per work hour. The cost for required parts would be minimal. Based on these figures, the cost impact of the proposed interchange on U.S. operators is estimated to be $71,520, or $120 per airplane.

The FAA also estimates that it would take approximately 4 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $143,040, or $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 95–NM–207–AD.

Applicability: Model 737–300, –400, and –500 series airplanes having line numbers 1001 through 2791, inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent adversely affected operation of the fuse, which could result in the loss of all hydraulic system pressure and consequent severely reduced controllability of the airplane, accomplish the following:

(a) For airplanes listed in Boeing Service Bulletin 737–29–1070, dated June 8, 1995: Within 4,000 flight hours after the effective date of this AD, interchange the location of the hydraulic fuse and the flow limiter of the standby hydraulic system of the leading edge so that the hydraulic fuse is positioned upstream of the flow limiter, in accordance with Boeing Service Bulletin 737–29–1070, dated June 8, 1995.

(b) For airplanes listed in Boeing Service Bulletin 737–29–1071, dated May 16, 1996: Within 4,000 flight hours after the effective date of this AD, replace the existing hydraulic fuses in the standby hydraulic system with new fuses that are not affected by low temperature operation, in accordance with Boeing Service Bulletin 737–29–1071, dated May 16, 1996.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 31, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–253 Filed 1–6–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–143–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A320 and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 and A321 series airplanes. This proposal would require replacement of two elevator aileron computers (ELAC) with ELAC's that contain new software. This proposal is prompted by reports indicating that some of these airplanes have experienced uncommanded movements of the ailerons. The actions specified by the proposed AD are intended to prevent situations, such as uncommanded rolls during turbulent conditions, which could lead to reduced controllability of the airplane.

DATES: Comments must be received by February 18, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–143–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamp postcard on which the following statement is made: ''Comments to Docket Number 95–NM–143–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–143–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A320 and A321 series airplanes. The DGAC advises that it has received reports indicating that some of these airplanes have experienced uncommanded rolls; flight crews reported these rolls as ranging from 5 degrees to 30 degrees.

The flight control system for both airplane models uses fly-by-wire technology. There are situations where the sensitivity of the fly-by-wire design creates safety concerns. Among these situations are:

- When the flaps are set on CONF 3 or CONF FULL and turbulence is encountered: The flight crew's responses, coupled with the handling characteristics of the airplane, could cause roll oscillations.
- When the flaps, during approach, have jammed in the fully-extended position and CONF 3 is subsequently selected: It becomes difficult for the flight crew to maintain the intended flight path.
- When contaminants interfere with proper operation of the sidestick transducer unit: A possible consequence is the transmission of transient signals from the sidestick to the ELAC. These signals could cause the ailerons to ''jerk,'' and result in an uncommanded roll, regardless of the automatic pilot mode and the stage of flight.

All of these situations, if not corrected, could lead to reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus Industrie has issued Service Bulletin A320–27–1082, dated April 25, 1995, which describes procedures for replacing the two ELAC's installed in the aft electronic rack 80VU with two ELAC's that have been modified. The modifications entail the installation of new software identified as ''L69J Standard,'' a program that alters the airplane's flying qualities to reduce the risk of encountering situations where uncommanded roll and other unsafe conditions are likely to occur. [This service bulletin references Sextant Service Bulletins 394512–27–014, dated August 11, 1995 (for airplanes on which modification 24136P3436 is not installed), and C12370A–27–001, dated May 2, 1995 (for airplanes on which modification 24136P3436 is installed), as additional sources of procedural service information for modification of the ELAC's. Sextant is the supplier of the ELAC's.]

The DGAC classified the Airbus Industrie service bulletin as mandatory and issued French airworthiness direction (C/N) 95–203–072(B), dated October 11, 1995, as corrected by Erratum, dated November 8, 1995, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in French and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require replacement of the two ELAC's installed in the aft electronic rack 80VU with two ELAC's that have been modified to include L69J Standard software. The actions would be required to be accomplished in accordance with the Airbus Industrie service bulletin described previously.

Cost Impact

The FAA estimates that 108 Airbus Industrie Model A320 and A321 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 3 work hours per airplane to accomplish the proposed actions, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $19,440, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 95–NM–143–AD.

Applicability: Model A320 and A321 series airplanes as listed in Airbus Industrie Service Bulletin A320–27–1082, dated April 25, 1995; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, due to problems associated with the elevator aileron computer (ELAC), accomplish the following:

(a) Within 1 year after the effective date of this AD, replace the ELAC's having part numbers (P/N) 3945122307 and/or P/N C12370AAA01 and located in aft electronics rack 80VU, with modified ELAC's having P/N 3945122502, in accordance with Airbus Industrie Service Bulletin A320–27–1082, dated April 25, 1995.

Note 2: Airbus Industrie Service Bulletin A320–27–1082 references Sextant Service Bulletins 394512–27–014, dated August 11, 1995 (for airplanes on which Airbus Industrie modification 24136P3436 has not been installed); and C12370A–27–001, dated May 2, 1995 (for airplanes on which Airbus Industrie modification 24136P3436 has been installed); as additional sources of procedural service information for modification of the ELAC's.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 31, 1996.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–252 Filed 1–6–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–SW–32–AD]

Airworthiness Directives; Hiller Aircraft Corporation Model UH–12A, UH–12B, UH–12C, UH–12D, and UH–12E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Hiller Aircraft Corporation (Hiller) Model UH–12A, UH–12B, UH–12C, UH–12D, and UH–12E helicopters, that currently requires a dye penetrant inspection of the head of the main rotor outboard tension-torsion (T–T) bar pin for cracks; a visual inspection of the outboard T–T bar pin for proper alignment and an adjustment, if necessary; and, installation of shims at the inboard end of the drag strut. This action would require the same actions required by the existing AD, but would allow a magnetic particle inspection of the T–T bar pin as an alternative to the currently required dye penetrant inspection, and would require reporting the results of the inspections only if cracks are found, rather than reporting all results of inspections as required by the existing AD. This proposal is prompted by an FAA analysis of a comment to the existing AD, and the fact that no cracks have been reported since the issuance of the existing AD. The actions specified by the proposed AD are intended to prevent cracks in the head area of the outboard T–T bar pin, which could result in loss of in-plane stability of the main rotor blade and subsequent loss of control of the helicopter.

DATES: Comments must be received by March 10, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–32–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Hiller Aircraft Corporation, 3200 Imjin Road, Marina, California 93933–5101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Matheis, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (310) 627–5235, fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–SW32–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–SW–32–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On May 25, 1995, the FAA issued AD 95–12–02, Amendment 39–9252 (60 FR 30184) to require for Hiller Model UH–12A, UH–12B, UH–12C, UH–12D, and UH–12E helicopters, within 25 hours time-in-service (TIS) or at the next 100 hour inspection, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS: (1) an inspection of the alignment of the outboard T–T bar pin and an adjustment, if necessary; and (2) an inspection for cracks in the head of the outboard T–T bar pin using a dye

penetrant method. Additionally, that AD requires, within 25 hours TIS or at the next 100 hour inspection, whichever occurs first, the installation of shims between the inboard end of the drag strut and the outboard T–T bar pin. That action was prompted by two accidents involving failure of the outboard T–T bar pin on Hiller UH–12E helicopters. The requirements of that AD are intended to prevent cracks in the head area of the outboard T–T bar pin, which could result in loss of in-plane stability of the main rotor blade and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has received a comment suggesting that paragraph (b) of the existing AD should specifically identify the compliance time for the inspection, even though the compliance time is stated in paragraph (a). The FAA agrees with the commenter, and the wording of paragraph (b) has been changed to clarify the inspection compliance time. Additionally, the same commenter requested that an alternate method of compliance for the inspection be included in paragraph (b) of the existing AD. The FAA agrees, and paragraph (b) has been changed to allow the use of a magnetic particle inspection as well as a dye penetrant inspection required by the existing AD. One additional commenter states that misalignment of the drag strut fork and the main rotor blade may be causing cracks. While the cause of the cracks is uncertain, the FAA has determined that the recurring inspections required by this AD should detect misalignments and cracks that could lead to failure of the T–T bar pin.

Since an unsafe condition has been identified that is likely to exist or develop on other Hiller Model UH–12A, UH12B, UH–12C, UH–12D, and UH–12E helicopters of the same type design, the proposed AD would supersede AD 95–12–02 to require, within 25 hours TIS or at the next 100 hour inspection, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS: (1) an inspection of the alignment of the outboard T–T bar pin and an adjustment, if necessary; and (2) an inspection for cracks in the head of the outboard T–T bar pin using a dye penetrant method or a magnetic particle method. Additionally, the proposed AD requires, within 25 hours TIS or at the next 100 hour inspection, whichever occurs first, the installation of shims between the inboard end of the drag strut and the outboard T–T bar pin.

The FAA estimates that 700 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $700 per pin. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $574,000, assuming one pin must be replaced on every helicopter in the fleet.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9252 (60 FR 30184, June 8, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Hiller Aircraft Corporation: Docket No. 96–SW–32–AD. Supersedes AD 95–12–02, Amendment 39–9252.

Applicability: Model UH–12A, UH–12B, UH–12C, UH–12D, and UH–12E helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracks in the head area of the outboard tension-torsion (T–T) bar pin, which could result in loss of in-plane stability of the main rotor blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS) after the effective date of this AD, or at the next 100 hour inspection, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS, inspect the alignment of the outboard T–T bar pin, part number (P/N) 51452, and adjust the alignment, if necessary, in accordance with Hiller Aviation Service Letter (SL) 51–2, dated March 31, 1978.

(b) Within 25 hours TIS after the effective date of this AD, or at the next 100 hour inspection, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS, inspect the head of the outboard T–T bar pin for cracks using a dye penetrant or magnetic particle inspection method.

(c) If a crack is found as a result of the inspection required by paragraph (b) of this AD, report the results within 7 working days following the inspection to the Manager, Los Angeles Aircraft Certification Office, Attention Charles Matheis, ANM–120L, 3960 Paramount Blvd., Lakewood, California 90712–4137. Include the helicopter model number, serial number, and total TIS of the outboard T–T bar pin in the report. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(d) Within 25 hours TIS after the effective date of this AD, or at the next 100 hours TIS inspection, whichever occurs first, install shims between the inboard end of the drag strut and the outboard T–T bar pin in accordance with the Accomplishment Instructions of Hiller Aviation Service Bulletin No. 51–9, dated April 8, 1983.

(e) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished. Issued in Fort Worth, Texas, on December 30, 1996.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–251 Filed 1–6–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 812

[Docket No. 95N–0342]

Export Requirements for Medical Devices; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 60 days the comment period for a proposed rule that appeared in the Federal Register of November 27, 1995 (60 FR 58308). The document proposed to amend FDA's regulations for investigational devices to streamline requirements for persons seeking to export unapproved medical devices. FDA is seeking comments on whether this rulemaking is still needed in light of recent changes in the export provisions of the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Written comments by March 10, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20850, 301–827–3380, electronic mail: PChao@bangate.FDA.gov.

SUPPLEMENTARY INFORMATION:

I. The National Performance Review and the Proposed Rule on Device Exports

At present, two statutory provisions in the act govern the export of devices that are not approved for marketing in the United States.

The first provision, in section 801(e)(2) of the act (21 U.S.C. 381(e)(2)), became law as part of the Medical Device Amendments Act of 1976 (Pub. L. 94–295) and required FDA approval of certain exports of unapproved devices. The second provision, in section 802 of the act (21 U.S.C. 382), was the result of the FDA Export Reform and Enhancement Act of 1996 (the Export Act of 1996) (Pub. L. 104–134, and amended by Pub. L. 104–180).

Before the latter provision became law, FDA had undertaken a program to streamline the requirements for the exportation of unapproved devices under section 801(e) of the act. In the Federal Register of November 27, 1995 (60 FR 58308), FDA issued a proposed rule to simplify the agency's export approval process for certain unapproved devices. The proposed rule was intended, in part, to respond to concerns in the device industry that the statutory requirement of FDA approval of device exports may undermine a firm's ability to compete in international markets and may represent an unnecessary regulatory barrier. (It should be emphasized, however, that FDA's approval times for device export applications have decreased significantly, from an average of 91 days per request in 1992 to 10 days in 1995, and further decreased to 8 days in fiscal year 1996.)

The proposed rule was also intended to implement part of the President's and Vice-President's ''National Performance Review'' pertaining to the exportation of unapproved devices (as announced in an April 1995 report entitled ''Reinventing Drug and Device Regulations''). Under the National Performance Review, the agency would permit the export of unapproved devices to certain advanced industrialized countries without prior FDA review and approval, provided that the device complied with the importing country's laws. The report also stated that the Administration would seek the necessary legislative changes and would consult Congress on the appropriate list of advanced industrialized countries. Furthermore, the report stated that FDA would initiate administrative changes to permit exports to countries that are not on the list of advanced industrialized countries ''if the exporter has an investigational device exemption (IDE) permitting testing on humans in the United States, the importing country has given FDA a letter providing blanket approval for IDE-type devices, and the device is in compliance with the importing country's laws.''

To implement the administrative reform aspects of the report, FDA proposed to amend § 812.18 (21 CFR 812.18) to state that a person who wishes to export an investigational device subject to part 812—Investigational Device Exemptions (21 CFR part 812) must comply with the requirements in section 801(e)(1) of the act, but that, for purposes of section 801(e)(2), prior FDA approval would be unnecessary if the investigational device to be exported is the subject of an approved IDE (including nonsignificant risk devices which, under FDA regulations, are considered to have an approved IDE) and ''will be marketed or used in clinical trials in the foreign country for the same intended use as that in the approved IDE and is to be exported to a country that has expressed its approval of the importation of investigational devices'' that are the subject of an approved IDE. The proposed rule also stated that, if the device is the subject of an approved IDE and has received a ''CE'' mark from the European Union (EU), the device may be exported to any country in the European Economic Area (EEA).

Proposed § 812.18(b)(1) also would have FDA's Center for Devices and Radiological Health (CDRH) make available a list of countries that have approved the importation of investigational devices that are the subjects of approved IDE's. The list would be maintained electronically.

Proposed § 812.18(b)(2) would require prior FDA approval to export an investigational device if FDA withdrew approval of the IDE or the sponsor terminated any or all parts of investigations because unanticipated adverse device effects present an unreasonable risk to subjects.

In the preamble to the proposed rule, FDA also stated that it would amend the proposed rule to reflect any legislative changes (60 FR 58308 at 58309).

Thus, the changes in the proposed rule would have benefited those companies wishing to export devices: (1) That have an approved U.S. IDE; (2) to countries that have agreed to accept U.S. IDE products; and (3) whose intended use is the same as the U.S. IDE. FDA believed this was as much

relief as could be provided under existing law at the time.

The agency received seven comments on the proposed rule. Most comments supported the rule, but recommended expanding the rule to explicitly mention certain devices (such as intraocular lenses and certain in vitro diagnostic devices), amending the rule so that a ''CE'' mark would permit exportation of the device to any country, or amending the rule to consider marketing authorization by developed countries as permitting exportation to any country. One comment questioned the likelihood that a country would agree to the importation of all devices having approved IDE's.

II. The Export Act of 1996 and Its Impact on the Proposed Rule

On April 26, 1996, the President signed the Export Act of 1996 (Pub. L. 104–134, and later amended by Pub. L. 104–180). The Export Act of 1996 amended, among other things, sections 801 and 802 of the act. The Export Act of 1996 amended section 801(e)(2) of the act to state, in part, that export of an unapproved device could occur only if the agency has determined that exportation of the device is not contrary to the public health and safety and has the approval of the country to which it is intended for export or ''the device is eligible for export under section 802'' of the act. Section 802 of the act, as amended, authorizes exports of unapproved drugs and devices if certain conditions or requirements are met. Under section 802(b)(1) of the act, an unapproved device may be exported to any country if the device complies with the laws of that country and has valid marketing authorization in Australia, Canada, Israel, Japan, New Zealand, Switzerland, South Africa, or in any country in the EU or the EEA (often referred to as the ''listed countries''). At present, the EU countries are Austria, Belgium, Denmark, Germany, Greece, Finland, France, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain, Sweden, and the United Kingdom. The EEA countries are the EU countries, plus Iceland, Liechtenstein, and Norway. As new countries join the EU or the EEA, they will automatically be treated as listed countries without any need for FDA action. Additionally, the Secretary of Health and Human Services may designate additional countries to be added to the list if certain requirements are met.

Another provision of the Export Act of 1996 pertains specifically to drugs and devices exported for investigational use. Section 802(c) of the act states that a drug or device intended for investigational use in any country described in section 802(b)(1)(A)(i) and (b)(1)(A)(ii) of the act may be exported in accordance with the laws of that country and shall be exempt from regulation under sections 505(i) and 520(g) of the act (21 U.S.C. 355(i) and 360j(g)). Thus, under section 802(c) of the act, as amended, a device may be exported for investigational use to any of the listed countries without prior FDA approval and without compliance with the IDE regulations in part 812.

However, all devices exported under section 802 of the act are subject to certain requirements, under section 802(f) of the act. For example, the device must be manufactured, processed, packaged, and held in substantial conformity with current good manufacturing practice (CGMP) requirements or meet international standards as certified by an international standards organization recognized by the agency; must not be adulterated under section 501(a)(1), (a)(2)(A), (a)(3), and (c) of the act (21 U.S.C. 351(a)(1), (a)(2)(A), (a)(3), and (c)); and must comply with section 801(e)(1)(A) through (e)(1)(D) of the act, which require the device to be intended for export, accord to the foreign purchaser's specifications, not be in conflict with the laws of the foreign country to which the device is being exported, be labeled on the outside of the shipping package that the device is intended for export, and not be sold or offered for sale in domestic commerce.

The Export Act of 1996 affects the proposed rule in several ways. First, it accomplished some changes to the proposed rule that the comments requested, particularly those comments that requested that FDA expand the proposed rule to cover other devices and other FDA-regulated products or requested FDA to permit exportation to any country if a device received marketing authorization in the EU or marketing authorization in a ''developed country.'' Second, the Export Act of 1996 also distinguishes between exports under section 801(e) of the act and exports under section 802 of the act. For example, when FDA published the proposed rule on November 27, 1995, devices were subject only to the requirements in section 801(e) of the act. The Export Act of 1996 gives firms an option whether to export a device under section 801(e) of the act or under section 802 of the act, and assigned different requirements to exports under each section of the act. Thus, any final rule on device exports that FDA publishes would have to reflect these changes in the law.

Finally, as stated earlier in this document, section 802(b)(1)(A) of the act authorizes export of an unapproved device to any country if the device complies with the laws of the importing country and the device has a valid marketing approval in any of the 25 countries identified in the act. Devices exported under section 802(b)(1)(A) of the act are also not required to obtain prior FDA approval, although they are subject to certain notification requirements, nor are they required to have an IDE. In contrast, the proposed rule's reference to exports of investigational devices for marketing purposes is limited to devices exported under section 801(e)(1) of the act and presumes that the person exporting the device has an IDE or is considered to have an approved IDE; thus, at a minimum, the proposed rule would have to be changed to reflect the requirements in section 802(b)(1)(A) of the act.

Section 802(c) of the act also has a significant impact on the proposed rule. Under section 802(c) of the act, devices exported for investigational use to any listed country are not subject to the IDE requirements and can be exported without prior FDA approval. In comparison, the proposed rule would have required the exported device to have an approved IDE or to be a nonsignificant risk device and be considered to have an approved IDE, and the streamlined requirements described in the proposal would have applied only to exports to countries that had notified FDA of their willingness to accept IDE devices.

The Export Act of 1996 contains other provisions that affect device exports. For example, devices exported under section 801(e) of the act do not have to comply with CGMP's, but devices exported under section 802 of the act must be in ''substantial conformity'' with CGMP's or meet international standards as certified by an international standards organization recognized by the agency. Devices exported under section 801(e) of the act must: (1) Accord to the foreign purchaser's specifications; (2) not conflict with the laws of the foreign country; (3) be labeled on the outside of the shipping package that the device is intended for export; and (4) not be offered for sale in the United States. In contrast, the labeling for devices exported under section 802 of the act must, in addition to the requirements in section 801(e)(1) of the act, be in accordance with the requirements and conditions of use of the listed country that authorized its marketing as well as the requirements and conditions of use

in the foreign country that will receive the device. The labeling for devices exported under section 802 of the act also must be in the language and units of measurement of the foreign country or in the language designated by that country.

III. Issues for Public Comment

Considering these changes in the export authority for devices, FDA is reopening for 60 days the comment period for the proposed rule. FDA is soliciting public comment on the following issues:

1. Is a final rule still necessary? Given that section 802 of the act now provides additional flexibility for device exports and to export devices without the need to make export requests under section 801(e)(2) of the act, is there still a need to streamline the export procedure under section 801(e)(2) of the act? If so, what specific relief for exports under § 801(e)(2) of the act is sought for U.S. IDE devices that is not preceded by the new legislation?

2. If a final rule is still necessary, what changes to the rule should be made? For example, the proposed rule included a program option under which foreign countries would notify FDA of their willingness to accept devices that are the subject of an approved IDE. However, there is little evidence to suggest that foreign governments will be willing to accept all IDE devices. Conceivably, a foreign government might be inclined to impose conditions on its acceptance of IDE devices, or accept some, but not all, devices. What are some alternatives to this program option? FDA invites interested persons to submit draft language for any suggested regulatory change.

Interested persons may, on or before March 10, 1997 submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

During this comment period and FDA's review of the comments, FDA will issue export permits under section 801(e)(2) of the act using current CDRH procedures. A copy of the procedures may be obtained through the Information Processing and Office Automation Branch (HFZ–307), Division of Program Operations, CDRH, by calling 301–594–4520 or by faxing a request to 301–594–4528. In the event that FDA decides, after considering the comments received, not to issue a final rule or to issue a new proposal, FDA will continue to issue export permits under section 801(e)(2) of the act using current CDRH procedures.

Dated: December 31, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–292 Filed 1–6–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–208172–91]

RIN 1545–AU71

Basis Reduction Due to Discharge of Indebtedness

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide ordering rules for the reduction of bases of property under sections 108 and 1017 of the Internal Revenue Code of 1986. The regulations will affect taxpayers that exclude discharge of indebtedness from gross income under section 108.

DATES: Written comments must be received by April 7, 1997. Outlines of oral comments to be presented at the public hearing scheduled for April 24, 1997, at 10 a.m. must be received by April 3, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–208172–91), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–208172–91), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations generally, Sharon L. Hall or Christopher F. Kane of the Office of Assistant Chief Counsel (Income Tax & Accounting) at (202) 622–4930; concerning partnership adjustments under section 1017, Brian M. Blum of the Office of Assistant Chief Counsel (Passthroughs & Special Industries) at (202) 622–3050; concerning submissions and the hearing, Evangelista C. Lee of the Regulations Unit at (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collections of information should be received by March 10, 1997. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in §§ 1.108–4(b), 1.1017–1(e)(2), and 1.1017–1(f)(2)(ii) and (iii). This information is required for a taxpayer to elect to reduce the adjusted bases of depreciable property under section 108(b)(5), to elect to treat section 1221(1) real property as either depreciable property or depreciable real property, and to account for a partnership interest as either depreciable property or depreciable real property. This information will be used to determine

whether taxpayers have properly reduced the bases of their properties. The collections of information are required to obtain a benefit. The likely respondents are individuals, farms, businesses or other for-profit institutions, and small businesses or organizations.

Estimated total annual reporting burden: *100,000* hour.

Estimated average annual burden per respondent: *1* hour.

Estimated number of respondents: *100,000.*

Estimated annual frequency of responses: *On occasion.*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This notice contains proposed amendments to the income tax regulations (26 CFR Parts 1 and 301) under sections 108 and 1017 of the Internal Revenue Code of 1986 (Code). The amendments are proposed to conform the regulations to amendments to sections 108 and 1017 made by the Bankruptcy Tax Act of 1980, Pub. L. 96–589, § 2, 94 Stat. 3389 (1980), 1980–2 C.B. 607 (Bankruptcy Tax Act); the Technical Corrections Act of 1982, Pub. L. 97–448, § 102(h)(1), 96 Stat. 2365, 2372 (1983), 1983–1 C.B. 451; the Deficit Reduction Act of 1984, Pub. L. 98–369, §§ 474(r)(5) and 721(b)(2), 98 Stat. 494, 839, 966 (1984), 1984–3 C.B. (Vol. 1) 1; the Tax Reform Act of 1986, Pub. L. 99–514, §§ 104(b)(2), 231(d)(3)(D), 822, and 1171(b)(4), 100 Stat. 2085, 2105, 2179, 2373, 2513 (1986), 1986–3 C.B. (Vol. 1) 2; and the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, § 13150, 107 Stat. 312, 446 (1993), 1993–3 C.B. 1.

In general, section 108 excludes from gross income discharges of indebtedness if the discharge occurs in a title 11 case or when the taxpayer is insolvent, or if the indebtedness is ''qualified farm indebtedness'' or ''qualified real property business indebtedness.'' Taxpayers generally must reduce specified tax attributes, including adjusted bases of properties, to the extent income from discharge of indebtedness is excluded from gross income under section 108. Section 1017 provides rules regarding any basis reductions required by, or elected under, section 108.

Explanation of Provisions

Overview

The legislative history of the Bankruptcy Tax Act states that the exclusion of discharge of indebtedness (COD income) from gross income under section 108 is intended to promote a debtor's fresh start. S. Rep. No. 1035, 96th Cong., 2d Sess. 10 (1980), 1980–2 C.B. 620, 624; H.R. Rep. No. 833, 96th Cong., 2d Sess. 11 (1980). The exclusion provided by the statute generally operates, however, to defer, rather than eliminate, income from discharge of indebtedness.

The deferral of income provided by statute is generally achieved by requiring a taxpayer to reduce specified tax attributes (including adjusted bases of property) under section 108(b) by an amount equal to the COD income excluded from gross income under section 108(a). Section 108(b)(2) requires a taxpayer to reduce tax attributes in the following order: (A) net operating loss; (B) general business credit; (C) minimum tax credit; (D) capital loss carryovers; (E) adjusted bases of property; (F) passive activity loss and credit carryovers; and (G) foreign tax credit carryovers. If the excluded COD income exceeds the sum of the taxpayer's tax attributes, the excess is permanently excluded from the taxpayer's gross income.

When basis reductions are necessary, section 1017(a) requires the taxpayer to reduce the adjusted bases of property held on the first day of the following tax year. Section 1017(b)(1) provides that the amount of the basis reduction required under section 1017(a), and the particular properties the bases of which are to be reduced, shall be determined under regulations.

General Rules for Basis Reduction

Consistent with the legislative history of the Bankruptcy Tax Act, the proposed regulations generally retain the ''tracing'' approach of the existing regulations issued under prior law. Thus, the proposed regulations require a taxpayer to reduce the adjusted basis of the property that secured the discharged indebtedness before reducing the adjusted bases of other property.

In addition, the proposed regulations modify the categories in the existing regulations to simplify the process of basis reduction. First, the distinction between purchase-money indebtedness and other secured indebtedness is eliminated. Second, the order of basis reduction for property that secured discharged indebtedness is changed. Thus, the first category of the general ordering rule is real property used in the taxpayer's trade or business or held for the production of income (other than section 1221(1) real property) that secured the discharged indebtedness, and the second category is personal property used in the taxpayer's trade or business or held for the production of income (other than inventory, accounts receivable, and notes receivable) that secured the discharged indebtedness. Therefore, if an indebtedness secured by a building, a parcel of land used in the taxpayer's trade or business, office equipment, and office furniture is discharged, the taxpayer proportionately reduces the adjusted bases of the building and the parcel of land, based upon their relative adjusted bases, to the full extent of the excluded COD income before reducing the adjusted bases of the office equipment and the office furniture. The IRS and Treasury Department believe that this modification of the current regulations will simplify the process of basis reduction for many taxpayers.

Special Rules for Depreciable Properties

Instead of reducing tax attributes in the order specified by section 108(b)(2), a taxpayer may elect under section 108(b)(5) first to reduce the adjusted bases of depreciable property (real and personal) to the extent of the excluded COD income. If the adjusted bases of depreciable property are insufficient to offset the entire amount of excluded COD income, the taxpayer must reduce any remaining tax attributes in the order specified in section 108(b)(2). Section 108(c) requires that excluded COD income from the cancellation of qualified real property business indebtedness must be applied against depreciable real property.

Section 1017(b)(3)(C) provides that a taxpayer must treat a partnership interest as depreciable property when reducing adjusted bases under section 108(b)(5), and as depreciable real property when reducing adjusted bases under section 108(c), to the extent the partnership correspondingly reduces the partner's proportionate interest in the adjusted bases of depreciable property (or depreciable real property) held by the partnership (inside basis).

The proposed regulations generally provide that a taxpayer may freely choose whether or not to request that a partnership reduce the partner's share of depreciable basis in partnership property and thereby permit the taxpayer to treat the partnership interest

as depreciable property (or depreciable real property). In addition, the proposed regulations generally provide that the partnership is free to grant or deny its consent. In order to prevent avoidance of the general ordering rules of the proposed regulations through the use of partnerships, however, a partner is required to request consent if the partner owns (directly or indirectly) more than 50 percent of the capital and profits interests of the partnership, or if the partner receives a distributive share of COD income from the partnership. In addition, the partnership is required to grant consent if requests are made by partners owning (directly or indirectly) an aggregate of more than 50 percent of the capital and profits interests of the partnership.

The proposed regulations provide that a partner requesting a reduction in inside basis must make the request before the due date (including extensions) for filing the partner's Federal income tax return for the taxable year in which the partner has COD income. A partnership that consents to a basis reduction must include a consent statement with its Form 1065, U.S. Partnership Return of Income, and must also provide a copy of that statement to the affected partner on or before the date the Form 1065 is filed. The IRS and Treasury Department recognize that under current law a partner may not always have sufficient information with which to decide to request a basis reduction until on, or shortly before, the due date (including extensions) for filing the partner's tax return. For example, for calendar year taxpayers, a partner's tax return and a partnership's Form 1065 are generally due on the same day. *See* sections 6031 and 6072. Comments are requested as to whether additional rules (such as requiring a partnership to inform partners of COD income prior to the date the Form 1065 is filed) are necessary to ensure that information is exchanged between the partnership and its partners in a timely fashion.

The proposed regulations remove § 301.9100–13T, which governs elections under section 108(b)(5), and add new proposed § 1.108–4. Under the temporary regulations, a taxpayer is required to make the election with the taxpayer's Federal income tax return for the taxable year in which the discharge occurs, but is permitted to file an election with an amended return, or claim for credit or refund, if the taxpayer establishes reasonable cause for failing to file the election with the original return. New proposed § 1.108–4 requires the taxpayer to make the election on the timely filed (including extensions) Federal income tax return for the taxable year the taxpayer has COD income that is excluded under section 108(a). Therefore, a taxpayer that fails to make the election on that return must request the Commissioner's consent to file a late election under § 301.9100–3T or any regulations that supersede § 301.9100–3T.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. Initial Regulatory Flexibility Act Analysis

This initial analysis is required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). In certain circumstances, the proposed regulations will require a partnership to include a statement with its Form 1065, U.S. Partnership Return of Income, and provide a copy of that statement with the taxpayer's Schedule K–1 (Form 1065), Partner's Share of Income, Credits, Deductions, etc., for the taxable year in which the COD income is excluded under section 108(a), stating the amount of the partner's share of the reduction in the partnership's adjusted bases of depreciable real or personal property (inside basis). This requirement will ensure that the partner knows it is entitled to reduce the adjusted basis of the partnership interest and that the affected partnership knows it must reduce the partner's interest in inside basis. The legal basis for this requirement is contained in sections 1017(b), 6001, and 7805(a).

Though the proposed regulations might affect any partnership owning depreciable property, the IRS and Treasury Department believe that partnerships owning depreciable real property are the most likely to be affected. Approximately 1,560,000 partnership returns were filed for 1993. Approximately 620,000 of these were for partnerships owning real property. It is unlikely, however, that many of these partnerships will be affected by the proposed regulations in any given year.

After a partner conveys information concerning the amount of COD income excluded from gross income under section 108(a) to the affected partnership, the partnership must reduce the partner's interest in inside basis. Accordingly, the partnership must prepare and maintain special entries on its books because this basis reduction will reduce the partner's share of the partnership's depreciation deductions, and ultimate gain or loss on the sale of the property, in subsequent years. In many cases, partnership returns are prepared using computer software that can prepare and maintain these special entries after the initial year.

The IRS and Treasury Department are not aware of any federal rules that may duplicate, overlap, or conflict with the proposed rule.

As an alternative to the disclosure described above, the IRS and Treasury Department considered, but rejected as too burdensome, a rule that would have required an affected partnership to disclose the reductions of adjusted basis on a property-by-property basis. There are no known alternative rules that are less burdensome to small entities but that accomplish the purpose of the statute. The IRS and Treasury Department request comments from small entities concerning possible alternatives.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 29, 1997, at 10 a.m. in IRS Auditorium, 7th Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by April 7, 1997 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 3, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Leo F. Nolan II, Office of Assistant Chief Counsel (Income Tax

and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.108–4 also issued under 26 U.S.C. 108.

Section 1.108–5 also issued under 26 U.S.C. 108.

Section 1.1017–1 also issued under 26 U.S.C. 1017.

§ 1.108(a)–1 [Removed]

Par. 2. Section 1.108(a)–1 is removed.

§ 1.108(a)–2 [Removed]

Par. 3. Section 1.108(a)–2 is removed.

§ 1.108(b)–1 [Removed]

Par. 4. Section 1.108(b)–1 is removed.

§ 1.1016–7 [Removed]

Par. 5. Section 1.1016–7 is removed.

§ 1.1016–8 [Removed]

Par. 6–7. Section 1.1016–8 is removed.

§ 1.1017–2 [Removed]

Par. 8. Section 1.1017–2 is removed.

Par. 9. Section 1.108–4 is added to read as follows:

§ 1.108–4 Election to reduce basis of depreciable property under section 108(b)(5).

(a) *Description.* An election under section 108(b)(5) is available whenever a taxpayer excludes discharge of indebtedness (COD income) from gross income under sections 108(a)(1)(A), (B), or (C) (concerning title 11 cases, insolvency, and qualified farm indebtedness, respectively). See sections 108(d)(2) and (3) for the definitions of *title 11 case* and *insolvent.* See section 108(g)(2) for the definition of *qualified farm indebtedness.*

(b) *Time and manner.* To make an election under section 108(b)(5), a taxpayer must enter the appropriate information on Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment),* and attach the form to the timely filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has COD income that is excluded from gross income under section 108(a). An election under this section may be revoked only with the consent of the Commissioner.

(c) *Effective date.* This section is effective for elections concerning discharges of indebtedness occurring on or after the date these regulations are published as final regulations in the Federal Register.

Par. 10. Section 1.108–5 is added to read as follows:

§ 1.108–5 Limitations on the exclusion of income from the discharge of qualified real property business indebtedness.

(a) *Indebtedness in excess of value.* The amount excluded from gross income under section 108(a)(1)(D) (concerning discharges of qualified real property business indebtedness) shall not exceed the excess, if any, of the outstanding principal amount of that indebtedness immediately before the discharge over the net fair market value of the qualifying real property, as defined in § 1.1017–1(c)(1), immediately before the discharge. For purposes of this section, *net fair market value* means the fair market value of the qualifying real property (notwithstanding section 7701(g)) reduced by the outstanding principal amount of any other qualified real property business indebtedness secured by that property immediately before and after the discharge.

(b) *Overall limitation.* The amount excluded from gross income under section 108(a)(1)(D) shall not exceed the aggregate adjusted bases of all depreciable real property held by the taxpayer immediately before the discharge (other than depreciable real property acquired in contemplation of the discharge) reduced by the sum of any—

(1) Depreciation claimed for the taxable year the taxpayer excluded discharge of indebtedness from gross income under section 108(a)(1)(D); and

(2) Reductions to the adjusted bases of depreciable real property required under section 108(b) or section 108(g) for the same taxable year.

(c) *Effective date.* This section is effective for discharges of qualified real property business indebtedness occurring on or after the date these regulations are published as final regulations in the Federal Register.

Par. 11. Section 1.1017–1 is revised to read as follows:

§ 1.1017–1 Basis reductions following a discharge of indebtedness.

(a) *General rule for section 108(b)(2)(E).* This paragraph (a) applies to basis reductions under section 108(b)(2)(E) that are required by section 108(a)(1) (A) or (B) because the taxpayer excluded discharge of indebtedness (COD income) from gross income. A taxpayer must reduce in the following order, to the extent of the excluded COD income but not below zero, the adjusted bases of property held on the first day of the taxable year following the taxable year that the taxpayer excluded COD income from gross income (in proportion to adjusted basis):

(1) Real property used in a trade or business or held for investment, other than real property described in section 1221(1), that secured the discharged indebtedness immediately before the discharge (see paragraph (f)(1) of this section for the treatment of partnership indebtedness as indebtedness secured by the taxpayer's interest in the partnership);

(2) Personal property used in a trade or business or held for investment, other than inventory, accounts receivable, and notes receivable, that secured the indebtedness immediately before the discharge (see paragraph (f)(1) of this section for the treatment of partnership indebtedness as indebtedness secured by the taxpayer's interest in the partnership);

(3) Remaining property used in a trade or business or held for investment, other than inventory, accounts receivable, notes receivable, and real property described in section 1221(1);

(4) Inventory, accounts receivable, notes receivable, and real property described in section 1221(1); and

(5) Property not used in a trade or business nor held for investment.

(b) *Operating rules*—(1) *Prior tax-attribute reduction.* The amount of excluded COD income applied to reduce basis does not include any COD income applied to reduce tax attributes under sections 108(b)(2) (A) through (D) and, if applicable, section 108(b)(5). For example, if a taxpayer excludes $100 of COD income from gross income under section 108(a) and reduces tax attributes by $40 under sections 108(b)(2) (A) through (D), the taxpayer is required to reduce the adjusted bases of property by $60 ($100–$40) under section 108(b)(2)(E).

(2) *Multiple discharged indebtednesses.* If a taxpayer has COD

income attributable to more than one discharged indebtedness resulting in the reduction of tax attributes under sections 108(b)(2) (A) through (D) and, if applicable, section 108(b)(5), paragraph (b)(1) of this section must be applied by allocating the tax-attribute reductions among the indebtednesses in proportion to the amount of COD income attributable to each discharged indebtedness. For example, if a taxpayer excludes $20 of COD income attributable to secured indebtedness A and excludes $80 of COD income attributable to unsecured indebtedness B (a total exclusion of $100), and if the taxpayer reduces tax attributes by $40 under sections 108(b)(2) (A) through (D), the taxpayer must reduce the amount of COD income attributable to secured indebtedness A to $12 ($20 − ($20 ÷ $100 × $40)) and must reduce the amount of COD income attributable to unsecured indebtedness B to $48 ($80 − ($80 ÷ $100 × $40)).

(3) *Limitation on basis reductions under section 108(b)(2)(E) in bankruptcy or insolvency.* If COD income arises from a discharge of indebtedness in a title 11 case or while the taxpayer is insolvent, the amount of any basis reduction under section 108(b)(2)(E) shall not exceed the excess of—

(i) The aggregate of the adjusted bases of property and the amount of money held by the taxpayer immediately after the discharge; over

(ii) The aggregate of the liabilities of the taxpayer immediately after the discharge.

(c) *Modification of ordering rules for basis reductions under sections 108(b)(5) and 108(c)*—(1) *In general.* The ordering rules prescribed in paragraph (a) of this section apply, with appropriate modifications, to basis reductions under sections 108 (b)(5) and (c). Thus, a taxpayer may reduce only the adjusted bases of depreciable property under section 108(b)(5) and may reduce only the adjusted bases of depreciable real property under section 108(c). Furthermore, for basis reductions under section 108(c), a taxpayer must reduce the adjusted basis of the qualifying real property to the extent of the discharged qualified real property business indebtedness before reducing the adjusted bases of other depreciable real property. The term *qualifying real property* means real property with respect to which the indebtedness is qualified real property business indebtedness within the meaning of section 108(c)(3). See paragraphs (e) and (f) of this section for elections relating to section 1221(1) property and partnership interests.

(2) *Partial basis reductions under section 108(b)(5).* If the amount of basis reductions under section 108(b)(5) is less than the amount of the COD income excluded from gross income under section 108(a), the taxpayer must reduce the balance of its tax attributes, including any remaining adjusted bases of depreciable property, under section 108(b)(2). For example, if a taxpayer excludes $100 of COD income from gross income under section 108(a) and elects to reduce the adjusted bases of depreciable property by $10 under section 108(b)(5), the taxpayer must reduce its remaining tax attributes by $90 under section 108(b)(2).

(3) *Modification of fresh start rule for prior basis reductions under section 108(b)(5).* After reducing the adjusted bases of depreciable property under section 108(b)(5), a taxpayer must compute the limitation on basis reductions under section 1017(b)(2) using the aggregate of the remaining adjusted bases of property. For example, if, immediately after the discharge of indebtedness in a title 11 case, a taxpayer's adjusted bases of property is $100 and its undischarged indebtedness is $70, and if the taxpayer elects to reduce the adjusted bases of depreciable property by $10 under section 108(b)(5), section 1017(b)(2) limits any further basis reductions under section 108(b)(2)(E) to $20 (($100 − $10) − $70).

(d) *Changes in security.* Any change in the property securing an indebtedness during the one-year period preceding the discharge of that indebtedness shall be disregarded if a principal purpose of that change is to affect the taxpayer's basis reductions under section 1017.

(e) *Election to treat section 1221(1) real property as depreciable*—(1) *In general.* For basis reductions under sections 108 (b)(5) and (g), a taxpayer may elect under sections 1017(b) (3)(E) and (4)(C), respectively, to treat real property described in section 1221(1) as depreciable property. This election is not available, however, for basis reductions under section 108(c).

(2) *Time and manner.* To make an election under section 1017(b) (3)(E) or (4)(C), a taxpayer must enter the appropriate information on Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment),* and attach the form to a timely filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has COD income that is excluded from gross income under section 108(a). An election under this paragraph (e) may be revoked only with the consent of the Commissioner.

(f) *Partnerships*—(1) *Partnership COD income.* For purposes of paragraph (a) of this section, a taxpayer must treat a distributive share of a partnership's COD income as attributable to a discharged indebtedness secured by the taxpayer's interest in that partnership.

(2) *Partnership interest treated as depreciable property*—(i) *In general.* For purposes of making basis reductions, if a taxpayer makes an election under section 108 (b)(5) or (c) the taxpayer must treat a partnership interest as depreciable property (or depreciable real property) to the extent of the partner's proportionate share of the partnership's basis in depreciable property (or depreciable real property), provided the partnership consents to a corresponding reduction in the partnership's basis (inside basis) in depreciable property (or depreciable real property) with respect to such partner.

(ii) *Request by partner and consent of partnership*—(A) *In general.* Except as otherwise provided in this paragraph (f)(2)(ii), a taxpayer may choose whether or not to request that a partnership reduce the inside basis of its depreciable property (or depreciable real property) with respect to the taxpayer, and the partnership may grant or withhold such consent, in its sole discretion. A request by the taxpayer must be made before the due date (including extensions) for filing the taxpayer's Federal income tax return for the taxable year in which the taxpayer has COD income that is excluded from gross income under section 108(a).

(B) *Request for consent required.* A taxpayer must request a partnership's consent to reduce inside basis if the taxpayer owns (directly or indirectly) a greater than 50 percent interest in the capital and profits of the partnership, or if reductions to the basis of the taxpayer's depreciable property (or depreciable real property) are being made with respect to the taxpayer's distributive share of COD income of the partnership.

(C) *Granting of request required.* A partnership must consent to reduce its partners' shares of inside basis if consent is requested by partners owning (directly or indirectly) an aggregate of more than 50 percent of the capital and profits interests of the partnership. For example, if there is a cancellation of partnership indebtedness securing real property used in a partnership's trade or business, and if partners owning (in the aggregate) 60 percent of the capital and profits interests of the partnership elect to exclude the COD income under

section 108(c), the partnership must make the appropriate reductions in those partners' shares of inside basis.

(iii) *Partnership consent statement*—(A) *Partnership requirement.* A consenting partnership must include with the Form 1065, U.S. Partnership Return of Income, for the taxable year of the partnership that ends with or within the taxable year the taxpayer excludes COD income from gross income under section 108(a), and must provide to the taxpayer on or before the date the Form 1065 is filed, a statement that—

(*1*) Contains the name, address, and taxpayer identification number of the partnership; and

(*2*) States the amount of the reduction of the partner's proportionate interest in the adjusted bases of the partnership's depreciable property or depreciable real property, whichever is applicable.

(B) *Taxpayer's requirement.* Statements described in paragraph (f)(2)(iii)(A) of this section must be attached to a taxpayer's timely filed (including extensions) Federal income tax return for the taxable year in which the taxpayer has COD income that is excluded from gross income under section 108(a).

(iv) *Partner's share of partnership's adjusted basis.* [Reserved.]

(3) *Partnership basis reduction.* The rules of this section (including this paragraph (f)), apply in determining the properties to which the partnership's basis reductions must be made.

(g) *Special allocation rule for cases to which section 1398 applies.* If a bankruptcy estate and a taxpayer to whom section 1398 applies (concerning only individuals under Chapter 7 or 11 of title 11 of the United States Code) hold property subject to basis reduction under section 108(b)(2)(E) or (5) on the first day of the taxable year following the taxable year of discharge, the bankruptcy estate must reduce all of the adjusted bases of its property before the taxpayer is required to reduce any adjusted bases of property.

(h) *Effective date.* This section is effective for discharges of indebtedness occurring on or after the date these regulations are published as final regulations in the Federal Register.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 12. The authority citation for part 301 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

§ 301.9100–13T [Removed]

Par. 13. Section 301.9100–13T is removed.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 97–154 Filed 1–6–97; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 63, 260, 261, 264, 265, 266, 270 and 271

[FRL–5672–6]

RIN 2050–AF01

Hazardous Waste Combustors; Revised Standards; Proposed Rule—Notice of Data Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comments.

SUMMARY: This announcement is a notice of availability and invitation for comment on the Agency's updated database of emissions and ancillary information on hazardous waste combustors (HWCs) pertaining to the proposed revised standards for hazardous waste combustors (61 FR 17358 (April 19, 1996)).

Readers should note that only comments about new information discussed in this notice will be considered during the comment period. Issues related to the April 19, 1996, proposed rule that are not directly affected by the documents or data referenced in this Notice of Data Availability are not open for further comment.

DATES: Written comments must be submitted by February 6, 1997.

ADDRESSES: Commenters must send an original and two copies of their comments referencing Docket Number F–96–CS2A–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, S.W., Washington, D.C. 20460. Comments may also be submitted electronically through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–96–CS2A–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Commenters should not submit electronically any confidential business information (CBI). An original and two copies of the CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, OSW (5305W), 401 M Street, SW, Washington D.C. 20460. For other information regarding submitting comments electronically, or viewing the comments received or supporting information, please refer to the proposed rule (61 FR 17358 (April 19, 1996)). The RCRA Information Center is located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia and is open for public inspection and copying of supporting information for RCRA rules from 9:00 a.m. to 4:00 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to view docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired) including directions on how to access electronically the database document (USEPA, ''Updated Hazardous Waste Combustor Database,'' December 1996) via EPA's Cleanup Information Bulletin Board System (CLU–IN). The database document is posted on CLU–IN in Portable Document Format (PDF) and can be viewed and printed using Acrobat Reader. The CLU–IN modem access phone number is 301–589–8366 or Telnet to clu-in.epa.gov for Internet access. The RCRA Hotline is open Monday–Friday, 9:00 a.m. to 6:00 p.m., Eastern Standard Time. Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). For other information on this notice, contact Bob Holloway (5302W), Office of Solid Waste, 401 M Street, S.W., Washington, DC 20460, phone (703) 308–8461, e-mail: holloway.bob@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On April 19, 1996, EPA proposed revised standards for hazardous waste combustors (i.e., incinerators and cement and lightweight aggregate kilns that burn hazardous waste). See 61 FR 17358. After an extension of the comment period, the comment period closed on August 19, 1996.

The Agency also published a notice of data availability (NODA) on August 23, 1996 (61 FR 43501) inviting comment on information pertaining to a peer review of aspects of the proposed rule, additional analyses of fuel oils that

would be used to establish a comparable fuel exclusion, and information on a synthesis gas process. The comment period on that NODA closed on September 23, 1996.

The Agency is today providing notice and opportunity to comment on an updated hazardous waste combustor database that presents the emissions and ancillary data that the Agency plans to use to develop the final rule. We note that changes in the proposed MACT floor levels could result from applying the alternative MACT methodologies discussed in the proposed rule to the updated database. In addition, changes in cost-effectiveness, and baseline and residual risk could result from using the updated database. Finally, the Agency will use the updated data in making decisions such as whether and how to subdivide source categories, whether to use normal versus compliance test data to develop standards, and whether to use older emissions data when more recent data are available from a source.

Updated HWC Data Base

EPA compiled a database containing the results of hazardous waste combustor (HWC) trial burns and facility operating and design characteristics as part of the development of the April 1996 proposed ''Maximum Achievable Control Technology'' (MACT) standards for HWCs (61 FR 17358, April 19, 1996). The database contains information from facilities in three source categories which burn hazardous wastes: incinerators (over 90 units), cement kilns (40 units), and lightweight aggregate kilns (13 units).[1] The database contains stack gas emissions data (including data on metals, chlorine, particulate matter, chlorinated dioxins and furans (PCDD/PCDF), carbon monoxide (CO), and hydrocarbons (HC)), process operating data (including waste, fuel, and raw materials compositions and feed rates), and facility equipment design and operational data (including combustor and air pollution control device temperatures, pressures, etc.).

Since the proposal of the rule, the Agency has received comments from stakeholders identifying: (1) errors in the database used for the proposed rule; and (2) new HWC trial burn and certification of compliance reports that were not considered for the proposed rule. Additionally, the Agency has received new compliance test reports through other data-gathering efforts since the proposed rule. The Agency has updated and revised the HWC database based on these comments and other data collection efforts.

The updated database is provided in: USEPA, ''Updated Hazardous Waste Combustor Database,'' December, 1996. This document is referred to in this notice as the database document. Hard copy printouts of the updated and revised database are contained in the ''Data Summary Reports'', found as Appendices to the document. The database document is provided in the administrative docket for this rule. In addition, an electronic version of the document can be accessed electronically via CLU–IN. (See the **FOR FURTHER INFORMATION** section of this notice.) Finally, the database is also available to interested persons in the database application Paradox (Version 5.0 for Windows). Refer to the database document for details.

The updated database has the same structure and main fields as that used for the proposed rule. It has nine related files:

- Site Information: Contains general information on each combustor unit, including database identification number, EPA identification number, EPA Region, company name, location (city and state), device name, air pollution control system, system type (commercial or onsite incinerator, cement kiln, lightweight aggregate kiln), waste burning status, and cement kiln design identifiers.
- Test Condition Information: Contains information on each test condition, including test condition and run identification number (both internal database and site identification numbers), condition and run dates, type of wastes and auxiliary fuels burned during the condition, description of the condition, as well as newly added condition descriptors identifying the condition as ''baseline,'' ''normal,'' or ''permit mode'' (as described in more detail below), and whether the condition was conducted with the most recent facility equipment and design.
- Stream Information: Contains information on the type and sampling location of each process stream (system outputs including stack gas emissions and solid effluents as well as system inputs including waste streams, auxiliary fuels, spiking streams, etc.), as well as stack information (including height and diameter).
- Process Stream Information: Contains information on each process stream, including rates (feed rates and discharge rates of solid, liquid and gas streams), as well as other stream properties (such as stack gas conditions including temperature, moisture, oxygen, and solid and liquid densities).
- Process Analysis Information: Contains feed input and effluent rates for a variety of constituents (including metals, chlorine, organics, ash, particulate matter, carbon monoxide, and hydrocarbons) associated with each of the process streams (both system inputs and effluents).
- Air Pollution Control Device Design Parameters: Contains information on design parameters of each air pollution control device (e.g., baghouse cloth area, cloth type, cleaning method).
- Air Pollution Control Device Operating Parameters: Contains information, by test condition run, on operating parameters of each air pollution control device (e.g., ESP specific collection area, operating temperature, power input).
- Combustor Design Parameters: Contains information on design parameters of the combustor (e.g., combustor size, manufacturer, type, number of chambers, cement kiln design).
- Combustor Operating Parameters: Contains information, by test condition run, on operating parameters of the combustor (e.g., combustor temperature, pressure).

The use and contents (including a comprehensive ''data element dictionary'') of the database are described in detail in the database document.

Updates to the Database

1. Changes to Existing Data Used to Support the Proposed Rule

The Agency received comments on additions and errors to data contained in the proposed rule database from three sources. The Chemical Manufacturers Association (CMA) provided specific comments on data from 21 incinerator facilities (RCSP–00182). The Cement Kiln Recycling Coalition provided specific comments on data from 23 cement kiln facilities (RCSP–00170) as well as some incinerators (overlapping generally with the CMA comments). For lightweight aggregate kilns, Solite provided specific comments on individual LWAK facilities (RCSP–00187).

The comments included identification of: (1) transcription errors (those made in transferring the data from the test report to the database); (2) test report errors; (3) missed or missing data; (4) non-representative conditions (such as baseline non-hazardous waste burning conditions); (5) updated reports (some Certification of Compliance tests that were used have since been revised and

[1] Data on boilers are also included in the database even though hazardous waste burning boilers would not be subject to this rule.

updated); (6) facilities not currently burning hazardous waste; (7) unsubstantiated and/or incorrect air pollution control device characteristics; and (8) inaccurate conversion of concentration emissions from mass based levels using gas flow rates and oxygen level. Changes and responses made as appropriate to each of the specific comments in each of these areas are discussed in detail in the database document.

2. New Test Reports Added to the Database

The Agency added results from many new test reports (from both new facilities as well as new test reports from facilities already in the database) to the HWC database. For incinerators, a few new trial burn reports were obtained through comments on the proposed rule, including reports from First Mississippi Corp., American Cyanamid, and Ciba Geigy. Various other reports from approximately 15 new incinerators, as well as new reports from facilities already in the database, including Waste Technologies Industries and DuPont, were added based on collection from the individual companies and/or EPA Regional Office archives.

The Agency added data from many new cement kiln test reports received from the Cement Kiln Recycling Coalition. Additionally, other individual cement companies including Ash Grove, Lafarge, Citadel/Medusa, and Continental provided separate test reports as part of their comments. The data are comprised of many new ''second round'' Certification of Compliance reports from testing done in 1994–1996, as well as various miscellaneous stack testing reports from conditions under ''normal'' non-trial burn type waste burning operations.

For LWAKs, the Agency added three new reports from Solite (all from new units) and a new report from Norlite based on comments on the proposed rule and other data collection efforts.

All new data that the Agency has incorporated into the database since the rule was proposed are tabulated in detail in the database document.

3. Other Database Additions

In addition to the above described database updates and changes, the Agency has added the following new information to the database:

- Device Descriptors:

—Waste Burning Status: Field identifying if the facility is currently burning hazardous waste.

—Mixed Waste Burner: Field identifying if the combustor accepts and routinely treats hazardous and radioactively contaminated ''mixed'' wastes.

—Cement Kiln Descriptors: Fields identifying long vs short kilns, those with alkali bypasses, and those with in-line raw mills.

- Condition Descriptors:

—Test Condition Date: Field identifying the test condition date.

—Baseline Conditions: Field identifying whether the condition was conducted under ''baseline'' conditions, baseline conditions being those where hazardous waste is not being fired.

—''Normal'' Conditions: Field identifying whether the condition was conducted under ''normal'' conditions. Normal conditions are defined as conditions conducted where hazardous waste is being burned, and where the unit is operating under typical ''every day'' procedures. During such testing, there is no intentional spiking of waste materials with POHC, chlorine, or metals compounds. Additionally, the unit is not operating under ''stressed'' conditions designed to maximize or minimize factors such as waste feed rates, temperatures, and air pollution control device operating parameters.

—''Permit'' Mode: Fields identifying whether the source used the test condition for setting permit or interim status operating limits for each individual constituent (each hazardous air pollutant or surrogate, including individual metals). For example, for metals and chlorine being controlled under the Boilers and Industrial Furnaces Rule, the condition would be a ''permit mode'' for all Tier II or Tier III constituents since the source testing was designed to evaluate acceptable feed rate limits based on the demonstrated system removal efficiency of the facility. Alternately, the condition would not be a permit (or operating limit) mode for Tier I or adjusted Tier I constituents since the source testing is not used for any direct regulatory-setting purpose. Only tests conducted with the purpose of complying with or establishing permit conditions (or interim status operating limits) and intended to be used to establish a facility ''operating envelope'' with respect to the specific HAP were identified with the ''permit'' mode marker.

—Latest Retrofits: Field identifying whether the condition is conducted using the most recent equipment and configuration.

Dated: December 19, 1996.

Michael Shapiro,

Director, Office of Solid Waste.

[FR Doc. 97–34 Filed 1–6–97; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 62, No. 4
Tuesday, January 7, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 96–097–1]

General Conference Committee of the National Poultry Improvement Plan Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

PLACE, DATE, AND TIME OF MEETING: The meeting will be held at the World Congress Center, Room 204 Red East, Atlanta, GA; (404) 223–4300. The General Conference Committee will meet on January 22, 1997 from 1:30 p.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Rhorer, Senior Coordinator, NPIP, VS, APHIS, 1500 Klondike Road, Suite A 102, Conyers, GA 30207, (770) 922–3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health.

Tentative topics for discussion at the upcoming meeting include:

1. The Georgia pullorum-typhoid study of susceptibility in the ostrich.
2. Technical evaluation of the current pollorum-typhoid serological assays as they apply to the ostrich.
3. Technical review of alternative testing for pullorum-typhoid at the hatchery for the ostrich.
4. California's ostrich health program.
5. Ratite diseases.
6. USDA import requirements for the ostrich.
7. Export requirements for the ostrich (China and Taiwan).
8. Proposed changes to the provisions of the NPIP.

The meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the committee's discussions. Written statements on the meeting topics may be filed with the committee before or after the meeting by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT**. Written statements may also be filed at the meeting. Please refer to Docket No. 96–097–1 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 3rd day of January 1997.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–427 Filed 1–6–97; 8:45 am]

BILLING CODE 3410–34–P

Rural Housing Service

Housing Preservation Grants

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. The HPG program is a grant program which provides qualified public agencies, private nonprofit organizations, and other eligible entities grant funds to assist very low- and low-income homeowners repair and rehabilitate their homes in rural areas, and to assist rental property owners and cooperative housing complexes to repair and rehabilitate their units if they agree to make such units available to low- and very low-income persons. This action is taken to comply with Agency regulations found in 7 CFR part 1944, subpart N, which requires the Agency to announce the opening and closing dates for receipt of preapplications for HPG funds from eligible applicants. The intended effect of this Notice is to provide eligible organizations notice of these dates.

DATES: RHS hereby announces that it will begin receiving preapplications on January 7, 1997. The closing date for acceptance by RHS of preapplications is April 7, 1997. This period will be the only time during the current fiscal year that RHS accepts preapplications. Preapplications must be received by or postmarked on or before the closing date.

ADDRESSES: Submit preapplications to Rural Development servicing offices for the HPG program; applicants must contact their Rural Development State Office for this information.

FOR FURTHER INFORMATION CONTACT: Sue M. Harris-Green, Senior Loan Officer, Multi-Family Housing Processing Division, RHS, USDA, Room 5337, South Building, Washington, DC 20250, telephone (202) 720–1606. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: 7 CFR part 1944, subpart N provides details on what information must be contained in the preapplication package. Entities wishing to apply for assistance should contact the Rural Development State Office to receive further information and copies of the preapplication package. Eligible entities for these competitively awarded grants include State and local governments, nonprofit corporations, Federally recognized Indian Tribes, and consortia of eligible entities.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.433, Housing Preservation Grants. This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V). Applicants are also referred to 7 CFR 1944.674 and 1944.676 (d) and (e) for specific guidance on these requirements relative to the HPG program.

The funding instrument for the HPG program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been established, although based on fiscal year (FY) 1997 funding availability, the Agency anticipates that the average grant will be $50,000 for a 1-year proposal. For FY 97, $7,063,000 is available and has been distributed under a formula allocation to States pursuant to 7 CFR part 1940, subpart L, ''Methodology and Formulas for Allocation of Loan and Grant

Program Funds.'' Decisions on funding will be based on the preapplications, and notices of action on the preapplications should be made no earlier than 66 days prior to the closing date.

Dated: December 30, 1996.

Eileen M. Fitzgerald,

Acting Associate Administrator, Rural Housing Service.

[FR Doc. 97–275 Filed 1–6–97; 8:45 am]

BILLING CODE 3410–XV–U

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: February 5, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 27 and October 25, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 F.R. 50804 and 55268) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Cap, Garrison, Men's, Army Enlisted
8405–01–334–1493 thru –1505
(20% of the Government's requirement)

Service

Janitorial/Custodial, Naval and Marine Corps Reserve Center, Broken Arrow, Oklahoma

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

G. John Heyer,

General Counsel.

[FR Doc. 97–200 Filed 1–6–97; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 5, 1997.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Library Services, Basewide, Beale Air Force Base, California
NPA: Yolo Employment Services, Woodland, California

Publication Distribution Services, Beale Air Force Base, California
NPA: Yolo Employment Services, Woodland, California

Temporary Administrative/General Support Services for GSA Regions 1, 2, 3, 4, 5, 6, 8, 9, 10 and the National Capitol Region
(Up to 50% of the Government's requirement)
NPA: (the following is not a complete list)
Columbia Lighthouse for the Blind, Washington, DC
The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, Illinois
Seattle Lighthouse for the Blind, Seattle, Washington
Alabama Industries for the Blind, Talladega, Alabama
Arizona Industries for the Blind, Phoenix, Arizona
Fedcap Rehabilitation Service, Inc., New York, New York
Brevard Achievement Center, Inc., Rockledge, Florida
Challenge Unlimited, Inc., Alton, Illinois
Minot Vocational Adjustment Workshop, Inc., Minot, North Dakota
Yuma Work Center, Inc., Yuma, Arizona

Cooperative Workshop, Inc., Sedalia, Missouri

G. John Heyer,

General Counsel.

[FR Doc. 97–201 Filed 1–6–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On July 9, 1996, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on dynamic random access memory semiconductors (DRAMs) of one megabit or above from the Republic of Korea (61 FR 36029). The review covers two manufacturers/exporters of the subject merchandise to the United States for the period May 1, 1994 through April 30, 1995. These manufacturers/exporters are LG Semicon Co., Ltd. (LGS, formerly Goldstar Electron Co., Ltd.) and Hyundai Electronics Industries, Inc. (HEI/Hyundai).

As a result of our analysis of the comments received, the antidumping margins have changed from those presented in our preliminary results.

EFFECTIVE DATE: January 7, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas F. Futtner, AD/CVD Enforcement Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–3814.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 1995, the Department published a notice of ''Opportunity to Request an Administrative Review'' of this antidumping duty order for the period of May 1, 1994, through April 30, 1995 (60 FR 24831). We received timely requests for review from three manufacturers/exporters of subject merchandise to the United States: Hyundai Electronics Industries, Co. (Hyundai), LG Semicon Co., Ltd. (LGS, formerly Goldstar Electron Co., Ltd.), and Samsung Electronics Co. (Samsung). The petitioner, Micron Technologies Inc., requested an administrative review of these same three Korean manufacturers of DRAMs. On June 15, 1995, the Department initiated a review of the above Korean manufacturers (60 FR 31447). The period of review (POR) for all respondents was May 1, 1994, through April 30, 1995.

On June 26, 1995, in accordance with section 773(b)(2)(A)(ii) of the Tariff Act of 1930, we also initiated an investigation to determine if Hyundai and LGS made sales of the subject merchandise below the cost of production (COP) during the POR based upon the fact that we disregarded sales found to have been made below the COP in the original less-than-fair-value (LTFV) investigation.

Samsung, formerly a respondent in this administrative review, was excluded from the antidumping duty order on DRAMs from Korea on February 8, 1996. See Final Court Decision and Partial Amended Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea, 61 FR 4765 (February 8, 1996). Accordingly, we terminated this review with respect to Samsung.

On July 9, 1996, the Department published the preliminary results (61 FR 36029) of administrative review of the antidumping duty order on DRAMs of one megabit or above from the Republic of Korea. We received timely comments from the petitioner and both respondents.

Scope of the Review

Imports covered by the review are shipments of DRAMs of one megabit and above from the Republic of Korea (Korea). For purposes of this review, DRAMs are all one megabit and above, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die and cut die. Processed wafers produced in Korea, but packaged, or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope of this review.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope.

The scope of this review also includes video random access memory semiconductors (VRAMs), as well as any future packaging and assembling of DRAMs.

The scope of this review also includes removable memory modules placed on motherboards, with or without a central processing unit (CPU), unless the importer of motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMs subject to this review are classifiable under subheadings 8542.11.0001, 8542.11.0024, 8542.11.0026, and 8542.11.0034 of the Harmonized Tariff Schedule of the United States (HTSUS). Also included in the scope are those removable Korean DRAMs contained on or within products classifiable under subheadings 8471.91.0000 and 8473.30.4000 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review remains dispositive.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

United States Price

We calculated U.S. price according to the methodology described in our preliminary results.

Normal Value

We calculated normal value (NV) according to the methodology described in our preliminary results.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results of this administrative review. We received timely comments from the petitioner and both respondents.

General Comments

Comment 1

The petitioner argues (1) that the Department should not have allowed a level of trade adjustment for both respondents, and (2) that the Department inappropriately applied a constructed export price (CEP) offset to respondents' CEP sales for this level of trade adjustment. The petitioner maintains that the Department erred in determining that one level of trade existed in the home market (direct sales by the parent corporation to the domestic customer) and a different level of trade existed in the U.S. market, where the Department used the level of trade of the sale to the affiliated importer rather than the resale to the unaffiliated customer (i.e., a ''constructed'' level of trade). According to the petitioner, the Act and the SAA do not permit the Department to use a ''constructed'' level of trade for CEP sales when identifying the level of trade. The petitioner argues that section 773(a)(7)(A) of the Act, which provides for a level of trade adjustment, does not make any distinction between export price (EP) sales and CEP sales, and that the distinction between EP and CEP sales in subsections 772(a) and 772(b) of the Act does not warrant any different treatment when identifying levels of trade.

The petitioner argues that, in view of the sections of the Act mentioned above, the Department's interpretation of the SAA as permitting a constructed level of trade means that the home market level of trade will always be a more advanced stage of distribution than the level of trade of the CEP and that the data available will never provide an adequate basis to determine a level of trade adjustment, and thus that the CEP offset will always be used. The SAA, according to the petitioner, intended the application of the CEP offset to be an exception, rather than the rule. The Department's acceptance of a constructed level of trade, the petitioner argues, contradicts the SAA's intent and the intent of the statute in section 773(a)(7)(A).

The petitioner argues further that, even if the Department adheres to the distinction between EP and CEP sales in determining the starting price for determining the level of trade, neither respondent has adequately demonstrated that it is entitled to a level of trade adjustment. The petitioner argues that the simple enumeration of selling functions in both the home market and in the U.S. market is not sufficient to demonstrate the significance of the differing selling functions in both markets.

LGS and Hyundai argue that the Department correctly applied the CEP offset to adjust for differences in the levels of trade in the two markets which were not able to be quantified. Both respondents assert that the Department's use of a ''constructed'' level of trade when analyzing CEP sales is in accordance with past interpretation of the SAA and of the Act. LGS maintains that the Department has consistently followed this approach and has explicitly stated in the antidumping questionnaire that constructed level of trade will be used.

LGS and Hyundai also reject the petitioner's argument that respondents have not adequately documented differences in selling functions in the home and in the U.S. markets. Respondents point out that the petitioner only referenced the brief discussion of the selling function differences contained in the notice of preliminary results and ignores the detailed analysis presented in its questionnaire response and in the Department's preliminary analysis memorandum. LGS and Hyundai argue that, because respondents' home market sales were at levels of trade more advanced than its U.S. sales and it was not possible to quantify the price differential caused by these differences, the Department should continue to allow a CEP offset to NV or to constructed value (CV) to adjust for the differences of trade in the two markets.

DOC Position

We agree with respondents. We have consistently determined that the statute and the SAA both support analyzing the level of trade of CEP sales at the constructed level, after expenses associated with economic activities in the United States (section 772(d) of the Act) have been deducted. We believe that it is neither reasonable nor logical to base level of trade on the starting price for both EP and CEP sales. We stated in Antidumping Duties; Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 61 FR 7308, 7347 (February 27, 1996), the following:

> With respect to the identification of levels of trade, some commentators argued that, consistent with past practice, the Department should base level of trade on the starting price for both export price (''EP'') and CEP sales...The Department believes that this position is not supported by the SAA...If the starting price is used for all U.S. sales, the Department's ability to make meaningful comparisons at the same level of trade (or appropriate adjustments for differences in levels of trade) would be severely undermined in cases involving CEP sales. As noted by other commentators, using the starting price to determine the level of trade of both types of U.S. sales would result in a finding of different levels of trade for an EP sale and a CEP sale adjusted to a price that reflected the same selling functions. Accordingly, the regulations specify that the level of trade analyzed for EP sales is that of the starting price, and for CEP sales it is the constructed level of trade of the price after the deduction of U.S. selling expenses and profit.

We have consistently stated that, in those cases where a level of trade comparison is warranted and possible, then for CEP sales the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Act (see Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan; Notice of Final Determination of Sales at Less Than Fair Value, 61 FR 38139, 38143 (July 23, 1996). In every case decided under the revised antidumping statute, we have consistently adhered to this interpretation of the SAA and of the Act. See, e.g., Aramid Fiber Formed of Poly para-Phenylene Terephthalamide from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review, 61 FR 15766, 15768 (April 9, 1996); Certain Stainless Steel Wire Rods from France; Preliminary Result of Antidumping Duty Administrative Review, FR 8915, 8916 (March 6, 1996); Antifriction Bearings (Other Than Tapered Roller Bearings) and parts Thereof from France, et. al., Preliminary Results of Antidumping Duty Administrative Review, 61 FR 25713, 35718–23 (July 8, 1996). In accordance with this clear precedent, our instructions in the questionnaire response issued to respondents in this administrative review stated that constructed level of trade should be used.

We disagree that respondents have not adequately documented the differences in selling functions in the home and in the U.S. markets. As noted by respondents, the petitioner based this argument solely upon the content of the preliminary results of review and ignored the detailed data on the record of this proceeding in respondents' questionnaire responses and in our preliminary analysis memorandum concerning the differences in selling functions. These data contained detailed

information and descriptions of the differences in selling functions in the two markets (for example, the differences in shipments per month from respondents to U.S. and home market customers is described in detail).

Comment 2

The petitioner maintains that the Department's preliminary calculations contained the following clerical errors with respect to both respondents: (1) the preliminary calculations double counted interest expenses by including both reported interest expense and imputed home market credit and inventory carrying expenses in its calculation of total cost of production for purposes of calculating profit for home market, CEP, and further-processed U.S. sales; (2) the preliminary calculations failed to add U.S. packing expenses to the foreign unit price in dollars for comparisons of U.S. sales to CV; and, (3) the Department erred in computing profit for CV based upon all home market sales, including those with negative profits, maintaining that section 773(e)(2)(A) of the Act, as amended by the URAA, has changed the calculation of profit to consider only profitable sales and to exclude sales below the cost of production.

DOC Position:

We agree with the petitioner that our preliminary calculations inadvertently double counted interest expense in the computation of the total cost of production for purposes of calculating profit for home market, CEP, and further-processed U.S. sales. We also agree that U.S. packing expenses should have been added to the foreign unit price in dollars. We have revised our calculations accordingly.

While we agree that our inclusion of all home market sales for purposes of calculating profit for CV was an error, we do not agree that it was a clerical error. Section 773(e)(2)(A) of the Act specifies the addition of ''the actual amounts incurred and realized by the specific exporter or producer * * * for selling, general, and administrative expenses, and for profits, in connection with the production and sales of a foreign like product in the ordinary course of trade * * *'' Although the petitioner argues that sales below cost are outside of the ordinary course of trade, section 773(b) of the Act is clear that sales below cost may be disregarded as being outside the ordinary course of trade only if made within an extended period of time in substantial quantities and at prices which do not permit the recovery of costs within a reasonable period of time. Section 771(15) of the Act provides that sales which failed the cost of production test provided for under section 773(b) of the Act are outside the ordinary course of trade. However, section 771(15) of the Act does not provide that sales made below the cost of production per se are outside the ordinary course of trade. Thus, sales below cost are not in and of themselves outside the ordinary course of trade, only those sales which fail our cost of production test and are thus disregarded. Accordingly for both respondents, as a result of this analysis, we have revised our calculations to base profit on CV for both respondents upon those home market sales which do not fail our cost of production test.

Company-Specific Comments

LGS

Comment 3

The petitioner argues that the Department erred in its preliminary results in calculating research and development expenses for LGS by allocating only a portion of LGS' semiconductor research and development expenses over a portion of LGS' cost of sales. The petitioner maintains that, in accordance with the precedent set in the first administrative review, the Department should allocate all of LGS' semiconductor research and development expenses over all of LGS' 1994 semiconductor cost of sales. The petitioner also maintains that the Department erred in allocating LGS' purchased research and development over the applicable contract periods. According to the petitioner, any purchased research and development should be included with all semiconductor research and development expenses allocated over LGS' 1994 cost of sales.

LGS agrees with the petitioner that purchased research and development should be included in those research and development expenses allocated over cost of sales for 1994. LGS contends that since the Department rejected LGS' allocation of purchased research and development over contract periods in the previous administrative review, it should allocated research and development purchased in 1994 over 1994 cost of sales.

LGS disagrees with the petitioner that all semiconductor research and development expenses should be allocated over all cost of sales. LGS maintains that non-DRAM research and development does not benefit LGS' DRAM production and that the Department should calculate a product-specific research and development rate for LGS.

DOC Position

We agree with the petitioner that, in calculating a research and development rate for LGS, all semiconductor research and development expenses should be allocated over all of LGS' semiconductor cost of sales reported in its audited 1994 financial statements. This method of allocation is consistent with our practice in the last administrative review, where we determined that sufficient evidence of cross-fertilization exists in the semiconductor industry to rule out the use of only product or DRAM-related research and development expenses. See Dynamic Random Access Memory Semiconductors from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 61 FR 20216, 20218 (May 6, 1996).

We agree with both the petitioner and LGS that research and development purchased in 1994 should be included in those research and development expenses allocated over LGS' 1994 cost of sales.

Comment 4

LGS argues that the Department erred in the preliminary calculations by deducting indirect selling expenses and inventory carrying costs incurred in Korea from U.S. price. LGS maintains that under the revised antidumping law, such expenses which do not result from or bear relationship to selling activities in the United States should not be deducted from U.S. price. LGS argues that the SAA only permits the deduction from U.S. price of selling expenses which result from, and bear a direct relationship to, selling activities in the United States.

The petitioner argues that the Department was correct in deducting these Korean expenses from U.S. price for LGS. The petitioner maintains that section 772(d) of the Act clearly requires the Department to reduce CEP by all expenses generally incurred by or for the account of the producer. According to the petitioner, the SAA is a clarification of prior law and was not intended to change current law.

DOC Position

We agree with the respondent. Section 772(d)(1) provides for the deduction of all expenses generally incurred by or for the account of the producer or exporter, or the affiliated reseller in the United States. However, the deductions under section 772(d) of the Act do not involve all direct and indirect selling expenses. The deductions under section 772(d) of the Act remove only expenses associated

with economic activities in the United States. Thus, the CEP is not a price necessarily exclusive of all selling expenses. Therefore, we have not deducted indirect selling expenses and inventory carrying costs incurred in Korea from U.S. price because these expenses do not result from or bear relationship to selling activities in the United States.

Comment 5

LGS and the noted the following clerical errors in the Department's computer program: (1) a programming error caused several home market sale dates to be mistakenly changed; (2) the Department's preliminary results failed to deduct home market packing expenses in its calculations of net home market price; (3) the preliminary calculations mistakenly double counted U.S. repacking expense; (4) the preliminary calculations mistakenly included duty drawback and movement expenses in the calculation of CEP profit; and, (5) the preliminary results mistakenly excluded non-profitable sales when computing profit for CEP.

DOC Position

We agree with LGS on each of these points and have revised our calculations accordingly.

Hyundai

Comment 6

The petitioner maintains that Hyundai misclassified its advertising expenses in the home market as direct selling expenses. Insofar as Hyundai did not submit samples of these advertisements, the petitioner maintains that Hyundai did not meet the burden of demonstrating that these home market advertising expenses were direct in nature. The petitioner urges the Department to reclassify all of Hyundai's home market advertising expenses as indirect expenses.

Hyundai argues that its home market advertising classification is correct. Hyundai notes that its home market advertising classification methodology remains unchanged from the previous administrative review where the Department accepted Hyundai's classification of home market advertising expenses. Hyundai maintains that there is no justification for reclassifying its home market advertising expenses.

DOC Position

We agree with Hyundai. Hyundai fully complied with our instructions in the antidumping questionnaire issued for this administrative review with respect to information requested for home market advertising expenses. Because Hyundai's methodology remained unchanged from the previous administrative review, we chose not to require Hyundai to submit further documentation on its home market advertising expenses during the POR. Therefore, we have accepted Hyundai's classification of its home market advertising expenses as direct selling expenses.

Comment 7

The petitioner maintains that the Department's preliminary results did not include Hyundai's sales of DRAMs sold by the ISD and Axil divisions of Hyundai's U.S. subsidiary Hyundai Electronics America, Inc. (HEA) in its dumping margin calculations. These DRAMs were further processed by ISD and Axil in the production of personal computers and computer workstations, some of which were sold with the memory modules separately invoiced (option sales) and some of which were sold without separately invoiced memory modules (embedded sales). The petitioner argues that the Department should include these sales in its margin analysis by setting the margin for these sales equal to the margin found on other further-processed sales and averaging the two margins together to derive one margin for all further-processed sales of DRAMs.

Hyundai agrees with the petitioner that these further-processed sales should be included in the Department's margin analysis, but disagrees with the petitioner on the method of including them. Hyundai maintains that, since there are other U.S. sales of merchandise identical to the ISD/Axil sales, the Department should apply the margin found on U.S. sales of identical merchandise to these ISD/Axil sales.

DOC Position

We agree with the petitioner and with Hyundai that the further-processed sales of DRAMs by ISD and Axil should be included in the dumping analysis of U.S. sales in the POR because it is the Department's longstanding practice to include all U.S. sales in its dumping calculations except in instances where title does not transfer to the U.S. customer or in the case of statistical sampling (see Color Television Receivers from the Republic of Korea, 58 FR 50333 (1993)). We agree with Hyundai that, because Hyundai had other U.S. sales identical models of DRAMs, the margins on these identical sales should be applied to the ISD/Axil sales. We revised our final calculations for Hyundai's ISD/Axil sales by applying the margin found on the other U.S. sales of models identical to those sold by ISD/Axil to Hyundai's ISD/Axil further-processed U.S. sales.

Comment 8

Hyundai asserts that the Department's preliminary calculations contained a clerical error in the computation of Hyundai's antidumping margin on sales of DRAMs in the United States further processed into memory modules. Hyundai maintains that the preliminary calculations incorrectly compared the U.S. price of these memory modules to NV, rather than to the foreign unit price in dollars.

DOC Position

We agree with Hyundai and have adjusted our final calculations accordingly.

Final Results of Review

Upon review of the comments submitted, the Department has determined that the following margins exist for the period of May 1, 1994 through April 30, 1995:

Manufacturer/exporter	Percent margin
May 1, 1994 through April 30, 1995:	
LG Semicon Co., Ltd.	0.01
Hyundai Electronic Industries, Inc.	0.10

The Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between USP and NV may vary from the percentages stated above. The Department will issue appraisement instructions concerning each respondent directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed firms will be zero percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash

deposit rate will be 3.85 percent, the all others rate established in the LTFV investigation. Samsung Electronics Co., Ltd. (Samsung), formerly a respondent in this administrative review, was excluded from the antidumping duty order on DRAMs from Korea on February 8, 1996. See Final Court Decision and Partial Amended Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea, 61 FR 4765 (February 8, 1996).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as the final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 24, 1996.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–295 Filed 1–6–97; 8:45 am]

BILLING CODE 3510–DS–P

A–122–047

Elemental Sulphur From Canada: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by respondents, the Department of Commerce (the Department) is conducting an administrative review of the antidumping finding on elemental sulphur from Canada. The review covers the period December 1, 1994 through November 30, 1995.

As a result of the review, we have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between United States price (USP) and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: January 7, 1997.

FOR FURTHER INFORMATION CONTACT: Rick Johnson or Jean Kemp, Office of Antidumping and Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute refer to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On December 17, 1973, the Department of the Treasury published in the Federal Register (38 FR 34655) the antidumping finding on elemental sulphur from Canada. On December 4, 1995, the Department published in the Federal Register a notice of opportunity to request an administrative review of this antidumping finding for the period December 1, 1994 through November 30, 1995 (60 FR 62070).

On January 11, 1996, Mobil Oil Canada, Ltd. (Mobil) requested an administrative review of its sales. On January 22, 1996, Husky Oil Ltd. (Husky) requested an administrative review of its sales. The review was initiated on February 1, 1996 (61 FR 3670–71).

The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by these reviews are shipments of elemental sulphur from Canada. This merchandise is classifiable under Harmonized Tariff Schedule (HTS) subheadings 2503.10.00, 2503.90.00, and 2802.00.00. Although the HTS subheadings are provided for convenience and for U.S. Customs purposes, the written description of the scope of this finding remains dispositive.

The period of review (''POR'') is December 1, 1994 through November 30, 1995, and covers two companies.

Verification

As provided in section 782(i) of the Act, we verified information provided by Mobil, using standard verification procedures, including on-site inspection of the manufacturer's facilities, examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Mobil

Facts Available

On May 31, 1996, petitioners alleged that Mobil made home market sales of subject merchandise below cost of production (''COP''). On June 28, 1996, we concluded that petitioners' allegation provided the Department with ''reasonable grounds to believe or suspect'' that Mobil made below cost sales in the home market within the meaning of section 773(2)(A)(i) of the Act. Therefore, we initiated a COP investigation of Mobil's sales, and directed Mobil to respond to Section D of the Department's February 8, 1996 questionnaire.

Mobil has maintained throughout this review that because sulphur is a ''waste product'', it does not track sulphur production and handling costs. In its August 5, 1996 cost response, Mobil estimated its cost of manufacture (''COM'') based on an engineering estimate of sulphur loading costs at one plant, representing 5% of Mobil's sulphur production. However, Mobil could not prove that this estimate bore any relation to Mobil's actual costs as recorded in Mobil's cost accounting system. Moreover, the estimate only applied to 5% of Mobil's production of

subject merchandise. Therefore, in response to the Department's September 3, 1996 request for supplemental information, Mobil submitted a response on September 25, 1996 based on an entirely different methodology, in which total plant costs (including production of gas, oil, and sulphur) were reported and then allocated to the production of subject merchandise.

In accordance with section 782(i) of the Act, during the week October 21–25, 1996, the Department conducted verification of Mobil's cost responses. At verification, Mobil revealed for the first time that two of its 22 plants maintained sulphur cost centers, including one whose sulphur cost center was active during the POR. The Department verification team then found that sulphur cost centers in fact were maintained during the POR for five of Mobil's plants, accounting for over 50% of Mobil's sulphur production during the POR. In response to the verification team's inquiry, Mobil stated while it was preparing its responses, it had not sought to ascertain whether the producing plants maintained sulphur cost centers. Moreover, the verification team found that the allocation methodology employed by Mobil in its September 25, 1996 response was based on a barrel of oil equivalent (''BOE''), a unit of measurement not used in the normal course of business by Mobil to allocate costs and not relevant to sulphur because sulphur is not burned.

Section 776(a)(2) of the Act provides that if an interested party or other person—(A) withholds information that has been requested by the Department, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, (C) significantly impedes a proceeding, or (D) provides such information but the information cannot be verified as provided in section 782(i), the Department shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination.

Section 782(d) provides that if the Department ''determines that a response to a request for information . . . does not comply with the request, {the Department} shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide the person with an opportunity to remedy or explain the deficiency in light of the time limits established for completion of investigations or reviews under this title.'' In accordance with that section, the Department provided Mobil ample opportunity to correct the defects in its submitted cost response. As indicated above, the deficiency in Mobil's original cost response methodology was brought to Mobil's attention in a supplemental questionnaire. *See Supplemental Cost Questionnaire Concerning the 1994–1995 Administrative Review of the Antidumping Finding on Elemental Sulphur from Canada,* Question 6, September 3, 1996 (''Please report costs for all facilities in which Mobil has an interest and which produce sulphur, and included costs from each facility in your calculations of the cost of production and constructed value. . . . Although you need not provide cost information with respect to any facility accounting for less than five percent of Mobil's total *production volume,* not sales volume, you must account for at least 90 percent of Mobil's total *production volume* in reporting Mobil's costs'' {emphasis in original}). In response to the Department's supplemental questionnaire, Mobil developed another methodology, yet continued to claim that it was unable to report costs in the form and manner requested by the Department. Only at verification did the Department discover that Mobil maintained cost centers specific to sulphur in its accounting records for the majority of its reported POR production.

Mobil's failure to provide the Department with the requested cost information constitutes a withholding of information within the meaning of section 776(a)(2)(A) of the Act. We must therefore consider whether the submitted cost data is usable under section 782(e) of the Act.

Section 782(e) provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the Department if: (1) the information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information; and (5) the information can be used without undue difficulties.

When examined in light of the requirements of section 782(e), the facts of the case indicate that Mobil's cost data is so fundamentally flawed as to render it unusable. Because the discovery of sulphur cost centers occurred only at verification (and therefore, would have remained undiscovered were it not for the Department's decision to verify Mobil's response), this information was not provided to the Department by the deadlines established for its submissions, as required by subsection (e)(1).

Additionally, as a consequence of the discovery at verification of these sulphur cost centers, the Department was unable to verify this information, as required by subsection (e)(2). It is a central tenet of Departmental practice that verification is not intended to be an opportunity for submitting new factual information. Further, the Department also stated in its verification outline that new information will be accepted at verification only when (1) the need for that information was not evident previously, (2) the information makes minor corrections to information already on the record, or (3) the information corroborates, supports, or clarifies information already on the record. *See Letter to Mobil Oil Canada: Sales and Cost Verification: Administrative Review of the Antidumping Duty Order on Elemental Sulphur from Canada,* page 2 (October 11, 1996). The discovery of sulphur cost centers meets none of these qualifications. As such, the Department could not verify this information during its verification of Mobil.

We also find the information which Mobil supplied in its responses to be so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, as required by subsection (e)(3). First, we have determined that the use of facts available for Mobil's cost data renders its sales data unusable. Because of the flawed nature of the cost data, home market sales cannot be tested to determine whether they were made at prices above production cost. Insofar as the Department only makes price-to-price comparisons (normal value to export price) using those home market sales that are made above cost, the flawed nature of the cost data makes these comparisons impossible.

In the absence of home market sales data, (*i.e.,* when the home market is viable but there are no comparison sales for a particular U.S. sale), the Department would normally resort to the use of constructed value as normal value. However, the constructed value information reported by Mobil is based on the discredited cost data. Therefore, the use of facts available for cost of production data precludes the use of the submitted constructed value information.

The Department's prior practice has been to reject a respondent's submitted information *in toto* when flawed and unreliable cost data renders any price-to-price comparison impossible. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30329 (June 14, 1996); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 30309, 30311 (June 14, 1996). The rationale for this policy is contained in *Notice of Final Determination of Sales at Less than Fair Value: Grain Oriented Electrical Steel From Italy*, 59 FR 33952, 33594 (July 1, 1994), where the respondent failed the cost verification. The Department explained that the rejection of a respondent's questionnaire response *in toto* is appropriate and consistent with past practice in instances where a respondent failed to provide verifiable COP information:

''[I]f the Department were to accept verified sales information when a respondent's cost information (a substantial part of the response) does not verify, respondents would be in a position to manipulate margin calculations by permitting the Department to verify only that information which the respondent wishes the Department to use in its margin calculation.''

This situation applies to Mobil, which provided sales information in proper form, but did not provide cost data which could be verified. Although *Electrical Steel from Italy* was a case involving best information available (BIA) under the pre-URAA statute, it is evidence of the Department's practice of regarding verified sales information as unusable when the corresponding cost data is so flawed that price-to-price comparisons are rendered impossible. The Department has reiterated this position in its *Notice of Preliminary Results of Antidumping Administrative Review: Cut-to-Length Carbon Steel Plate from Sweden*, 61 FR 51898, 51900 (October 4, 1996), a case under the post-URAA statute.

In addition, we find that Mobil has not demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department in this review. As noted in the verification report, Mobil did not ask any of its plants whether they maintained sulphur-specific cost centers when preparing its responses. *See Cost Verification of Mobil Oil Canada, Ltd. (''Mobil''): Administrative Review of Elemental Sulphur From Canada*, November 18, 1996, pp. 7–8. Thus, we find that section 782(e)(4) of the Act provides a further basis for declining to consider Mobil's information.

Accordingly, we find that there is no reasonable basis for determining normal value for Mobil in this review. As a result, we could not use Mobil's U.S. sales data in determining an antidumping margin, in accordance with section 782. The Department has no choice, therefore, but to resort to a total facts available methodology.

Section 776(b) provides that adverse inferences may be used in selecting from the fact otherwise available if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* SAA at 870.

We have determined that Mobil did not act to the best of its ability to comply with our requests for information. As discussed above, Mobil did not even ask the producing plants whether they maintained sulphur cost centers. Accordingly, as authorized by section 776(b) of the Act, we have applied an adverse inference in selecting Mobil's margin.

Section 776(b) authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or any other information placed on the record. The SAA provides that ''[i]n employing adverse inferences, one factor the [Department] will consider is the extent to which a party may benefit from its own lack of cooperation.'' SAA at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate ''secondary information'' by reviewing independent sources reasonably at its disposal. The SAA, at 870, makes it clear that ''secondary information'' includes information from the petition in the less-than-fair-value (LTFV) investigation and information from a previous section 751 review of the subject merchandise. The SAA also provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. *Id.*

For our total adverse FA margin, we chose to apply the highest calculated margin from any prior administrative review which the Department is able to corroborate, 7.17%. This rate was calculated in the 1991–92 administrative review of this proceeding, the most recently concluded portion of this proceeding.

As the Department noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.

The Department notes that the above rate, in addition to being calculated, was also used as ''second-tier'' (cooperative) BIA in the 1991–92 administrative review. Because we have determined that Mobil has not acted to the best of its ability to comply with our requests for information, we also considered the application of 28.9%, which was the ''first tier'' BIA rate for nine companies (not including Mobil) in the 1991/1992 review of this finding. However, we could not corroborate this rate based on the Department's official records of this proceeding. If this rate is corroborated subsequent to these preliminary results, we will consider its application as total adverse facts available for Mobil for the purposes of the final results of review.

Finally, we will also consider final rates calculated in the 1992/93 and the 1993/94 administrative reviews in determining total adverse facts available for Mobil for the purposes of the final results of this review.

Husky

Fair Value Comparisons

To determine whether sales of subject merchandise to the United States were made at less than fair value, we compared the EP to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2), we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price

For calculation of the price to the United States, we used EP, in accordance with section 772(a) of the Act, because Husky's subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and use of

CEP methodology was not otherwise warranted. We calculated export price based on f.o.b. plant or delivered prices to unrelated customers. We made adjustments, where applicable, for brokerage and handling, foreign inland freight, and tank car expenses, in accordance with section 772(c) of the Act.

Normal Value

We found that Husky's quantity of sales in its home market of the foreign like product exceeded five percent of its sales to the United States. Therefore, we have determined that Husky's home market sales are viable for purposes of comparison with sales of the subject merchandise to the United States, pursuant to section 773(a)(1)(C)(ii) of the Act. Moreover, there is no evidence on the record indicating a particular market situation in the exporting country that would not permit a proper comparison of home market and U.S. prices. *See* section 773(a)(1)(C)(iii). Thus, we based NV on the prices at which the foreign like products were first sold for consumption in the home market, in the usual commercial quantities, in the ordinary course of trade, and at the same level of trade as the EP sales.

We based NV on home market prices to unaffiliated purchasers (Husky made no sales to affiliated parties). Home market prices were based on ex-factory or delivered prices. We made adjustments, where applicable, for movement expenses in accordance with sections 773(a)(6)(B) of the Act. We also made adjustments for differences in circumstances of sale (''COS'') in accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56 by deducting home market direct selling expenses and adding U.S. direct selling expenses. These amounts included imputed credit expenses in the home market and imputed credit expenses in the U.S. market.

On May 31, 1996, petitioners alleged that Husky made home market sales of foreign like product below cost of production (''COP''). On June 28, 1996, we concluded that petitioners' allegation provided the Department with ''reasonable grounds to believe or suspect'' that Husky made below cost sales in the home market within the meaning of section 773(2)(A)(i) of the Act. Therefore, we initiated a COP investigation of Husky's sales.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in condition for shipment. In our COP analysis, we used home market sales and COP information provided by Husky in its questionnaire response.

After calculating COP, we tested whether home market sales of the foreign like product were made at prices below COP and, if so, whether they were made within an extended period of time in substantial quantities and at prices which did not permit recovery of all costs within a reasonable period of time. *See* section 773(b)(1). Because each individual price was compared against the POR-long weighted average COP, any sales that were below cost were also not at prices which permitted cost recovery within a reasonable period of time. We compared the COP for liquid sulphur to the reported home market prices less any applicable movement charges.

Pursuant to section 773(b)(2)(C) of the Act, we concluded that Husky's below cost sales were made in substantial quantities because the volume of these sales represented more than 20 percent of the volume of sales under consideration for the determination of normal value. We also concluded that these below-cost sales were made within an extended period of time (*i.e.*, within the period of review) within the meaning of section 773. *See* SAA at 832.

In accordance with section 773(b)(2)(D), we concluded that Husky's below-cost sales were not at prices which permit recovery of all costs within a reasonable period of time because the prices for the below-cost sales were below the weighted average per unit cost of production for the period of review.

Based on these tests, we disregarded below-cost sales with respect to Husky.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period December 1, 1994 through November 30, 1995:

Manufacturer/Exporter	Time period	Margin (percent)
Husky Oil Ltd.	12/1/94–11/30/95	[1] 0.33
Mobil Oil Canada, Ltd.	12/1/94–11/30/95	[7].17

[1] This is a de minimis rate.
[2] As described above, this total adverse facts available rate is subject to change for the final results of review.

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or other written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews (except that no deposit will be required for firms with zero or *de minimis* margins, *i.e.*, margins less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit

rate for all other manufacturers or exporters will continue to be the ''all others'' rate made effective by the final results of the 1991–1992 administrative review of this order (*see Elemental Sulphur from Canada: Final Results of Administrative Review*, 61 FR 8239, 8252 (March 4, 1996)). As noted in those final results, the Department determined this rate to be 5.56 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: December 30, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–296 Filed 1–6–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–839]

Suspension of Antidumping Duty Investigation: Sodium Azide From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has suspended the antidumping duty investigation involving sodium azide from Japan. The basis for this action is an agreement between the Department and producers/exporters accounting for substantially all imports of sodium azide from Japan wherein each signatory producer/exporter has agreed either to revise its prices to eliminate completely sales of this merchandise to the United States at less than fair value or to cease exports of this merchandise to the United States.

EFFECTIVE DATE: January 7, 1997.

FOR FURTHER INFORMATION CONTACT: William H. Crow II or Michelle A. Frederick, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue N.W., Washington, D.C. 20230; telephone (202) 482–0116 or (202) 482–4162, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 5, 1996, the Department initiated an antidumping investigation under section 732 of the Tariff Act of 1930, (the Act), as amended, to determine whether imports of sodium azide from Japan are being or are likely to be sold in the United States at less than fair value (61 FR 4959 (February 9, 1996)). On March 8, 1996, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination (see ITC Investigation No. 731–TA–740). On August 9, 1996, the Department preliminarily determined that sodium azide is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (61 FR 42585, (August 16, 1996)).

The Commerce Department and the Japanese producers of sodium azide initialed a proposed agreement suspending this investigation on November 13, 1996. On that date, we invited interested parties to provide written comments on the agreement. On December 20, 1996, American Azide Corporation, the petitioner, filed comments with the Department.

The Department and the signatory producers/exporters of sodium azide from Japan signed the final suspension agreement on December 26, 1996.

Scope of Investigation

The product covered by this investigation is sodium azide (NaN_3) regardless of use, and whether or not combined with silicon oxide (SiO_2) or any other inert flow assisting agent. The merchandise under investigation is currently classifiable under item 2850.00.50.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Interested Party Comments

Having analyzed all comments filed by interested parties, we conclude that the Agreement meets the requirements of the statute. The petitioner raised the following concerns:

First, the petitioner emphasized that the agreement, in its opinion, was in the public interest, and stated its reasons for this conclusion. Second, the petitioner requested that the Department revise the language in the proposed agreement to identify product types by physical characteristics and not by end use, in order to preclude possible future circumvention of the agreement. Third, the petitioner asked the Department to ensure that the language of the agreement reflect the statutory definition of profit for constructed value, whereby the Department would base profit ''only on amounts realized in connection with sales in the ordinary course of trade.''

As to the first point, the Department agrees that this agreement is in the public interest, as outlined in the December 26, 1996, memorandum from David Mueller, Director of the Office of Policy, to Robert S. LaRussa, Acting Assistant Secretary for Import Administration (''Public Interest Memorandum''). With respect to the second point, the Department has modified the product type language in the final agreement using physical characteristics to define such types. Third, the Department has added citations to the statute in the agreement in order to define profit for constructed value.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. In accordance with section 734(b) of the Act, we have determined that the agreement will either eliminate exports of this merchandise to the United States or eliminate completely sales of this merchandise to the United States at less than fair value, that the agreement is in the public interest, and that the agreement can be monitored effectively. See December 26, 1996, Public Interest Memorandum. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734(b) of the Act have been met. The terms and conditions of this agreement, signed December 26, 1996, are set forth in Annex 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, effective January 7, 1997, the suspension of liquidation of all entries of sodium azide from Japan entered or withdrawn from warehouse, for consumption, as directed in our notice of ''Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Sodium Azide from Japan'' is hereby terminated. Any cash deposits on entries of sodium azide from Japan pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

Notwithstanding the suspension agreement, the Department will continue the investigation if it receives a request in accordance with section 734(g) of the Act within 20 days after the date of publication of this notice.

This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: December 30, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

Annex 1: Suspension Agreement: Sodium Azide From Japan

Under section 734(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673c) (''the Act''), and 19 CFR 353.18, the U.S. Department of Commerce (''the Department'') and the signatory producers/exporters of sodium azide from Japan enter into this suspension agreement (''the Agreement''). On the basis of the Agreement, the Department shall suspend its antidumping investigation initiated on February 9, 1996 (61 FR 4959) of sodium azide from Japan, subject to the terms and provisions set forth below.

A. Product Coverage

(1) The merchandise subject to the Agreement is sodium azide (NaN_3), regardless of use, and whether or not combined with silicon oxide (SiO_2) or any other inert flow assisting agent, that has Japan as its origin.

(2) Sodium azide is presently classifiable under subheading 2850.00.50.00 of the Harmonized Tariff Schedule of the United States (''HTSUS'').

(3) Sodium azide is presently classifiable under subheading 2850.00.50.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The products covered are sodium azide regardless of form, dose, or purity. Sodium azide includes, but is not limited to: (1a) ground sodium azide with flow assisting agents (hereinafter referred to as ground airbag sodium azide); (1b) unground sodium azide with flow assisting agents (hereinafter referred to as unground airbag sodium azide); and (2) sodium azide without flowing agents, hereinafter referred to as sodium azide for pharmaceutical use.

B. U.S. Import Coverage

(1) The signatory producers/exporters collectively are the producers and exporters in Japan that, during the antidumping investigation of the merchandise subject to the Agreement, accounted for substantially all (not less than 85 percent) of the subject merchandise imported into the United States, as provided in the Department's regulations. The Department may at any time during the period of the Agreement require additional producers/exporters in Japan to sign the Agreement in order to ensure that not less than substantially all imports into the United States are covered by the Agreement.

(2) In reviewing the operation of the Agreement for the purpose of determining whether the Agreement has been violated or is no longer in the public interest, the Department will consider imports into the United States from all sources of the merchandise described in section A of the Agreement. For this purpose, the Department will consider factors including, but not limited to, the following: Volume of trade, pattern of trade, and the reseller's export price.

C. Basis of the Agreement

(1) This Agreement is entered into pursuant to 19 U.S.C. 1673c(b). On or after the effective date of the Agreement, each signatory producer/exporter individually agrees either to make any necessary price revisions to eliminate completely any amount by which the normal value (''NV'') exceeds the U.S. price of its merchandise subject to the Agreement or to cease exports of its merchandise subject to the Agreement. The Department will determine the NV in accordance with section 773(e) of the Act and U.S. price in accordance with section 772 of the Act.

(2) For sales occurring on or after the effective date of the Agreement through May 31, 1997, each signatory producer/exporter agrees not to sell merchandise subject to the Agreement to unaffiliated purchasers to the United States at prices that are less than the merchandise's normal value as determined by the Department based on the cost information for the period of investigation, April 1, 1995-March 31, 1996, already submitted to the Department.

(3) Starting June 1, 1997 and each semi-annual period thereafter beginning on June 1 and December 1, each signatory producer/exporter agrees not to sell merchandise subject to the Agreement to any unaffiliated purchaser to the United States at prices that are less than the merchandise's NV for that time period or to cease exports of its merchandise subject to this Agreement.

D. Monitoring

Each signatory producer/exporter will supply to the Department all information that the Department deems necessary to ensure that the producer/exporter is in full compliance with the terms of the Agreement.

1. U.S. Sales Reporting

(1) The Department will require each signatory producer/exporter to report on a quarterly basis whether or not it has had sales or shipments to the United States and, if so, to report each sale, shipment and all related adjustments of the merchandise subject to the Agreement, sold either directly or indirectly to unaffiliated purchasers in the United States. Such reports shall be made not later than 30 days following the close of the reporting period using the specified format and method of data compilation and U.S. price calculation as set forth in Appendix A.

(2) The first report of U.S. sales data for sales occurring on or after the effective date of the Agreement through March 31, 1997 shall be submitted to the Department in the prescribed format and using the prescribed method of data compilation, not later than April 30, 1997.

(3) If the Department receives information that a possible violation of the Agreement may have occurred, the Department may request sales data more frequently.

2. Cost Reporting

(1) Each signatory producer/exporter must request NVs for all subject merchandise that will be sold either directly or indirectly to unaffiliated purchasers for the United States. To calculate NV, the Department will require each signatory producer/exporter to report, using the specified format and method of data compilation, cost information for sodium azide for the immediately preceding six month time period. Such report will be due not later than 30 days following the close of the reporting period. For those products for which a signatory producer/exporter is requesting NVs, the Department will require the signatory producer/exporter to report its cost of manufacturing; selling, general and administrative (''SG&A'') expenses; and profit data for the immediately preceding six-month period in the prescribed format to enable use of the data to calculate NV as indicated in Appendix B. When reporting costs, the signatory producer/exporter also must report anticipated increases in production costs and may report anticipated decreases in production costs, resulting from factors such as anticipated changes in production yield, changes in production process, changes in production quantities or changes in production facilities.

(2) The first report of cost information on or after implementation of this Agreement shall be submitted to the

Department in the prescribed format and using the prescribed method of data compilation, not later than April 30, 1997. This cost data will cover the period April 1, 1996 through March 31, 1997.

(3) The Department shall use the cost data in accordance with Appendix B to calculate a NV. The NV shall be effective the first day of the month after issuance, but no sooner than 5 days after issuance, and shall remain in effect for the next six-month period.

(4) If the Department receives information that a possible violation of the Agreement may have occurred, the Department may request additional cost data more frequently.

(5) If the Department determines that the NV it determined for a previous period was erroneous because the reported data for that period were inaccurate or incomplete, or for any other reason, the Department may adjust NV in a subsequent period or periods, unless the Department determines that section E of the Agreement applies.

3. Other Provisions

(1) Upon proper application for an APO covering the suspension agreement, the representative(s) of the U.S. industry producing the subject merchandise may obtain business proprietary information submitted to the Department for each reporting period, as well as the results of the Department's analysis under section 773 of the Act.

(2) All submissions to the Department by any signatory to this Agreement shall also be served promptly on the designated representatives of the U.S. industry subject to the terms and conditions of any applicable administrative protective order (''APO''). The Department will provide the representatives of the U.S. industry an opportunity to comment on such submissions.

(3) When the Department identifies, as a result of its own price monitoring or as a result of comments provided by representative(s) of the U.S. industry, that one or more sales to the United States may have been made at prices that are inconsistent with the requirements of this Agreement, the Department will notify the party concerned. The Department will consult with that party for a period of up to 30 days to review the matter. During the consultation period, the Department will notify representative(s) of the U.S. industry and will provide an opportunity for comments by all parties, and the Department will examine any information that it develops or that is submitted.

(4) Each signatory producer/exporter agrees to verification of all sales and costs information, as the Department deems necessary. A signatory producer/exporter who has not undergone verification in the investigation stage of this proceeding shall undergo verification prior to being given a NV under this Agreement.

(5) Signatory producers/exporters agree not to circumvent the Agreement. Upon request of the Department, signatory producers/exporters will submit a written statement to the Department certifying that the sales reported hereunder were not, or are not, part of or related to on-site processing arrangements, discounts, free goods, or financing packages, swaps, other exchanges, or any other arrangements, where such arrangements are designed to circumvent the basis of the Agreement.

Where there is reason to believe that an arrangement circumvents the basis of this Agreement, the Department will request signatory producers/exporters to provide within 14 days all particulars regarding any such arrangement, including, but not limited to, sales information pertaining to covered and noncovered merchandise that is manufactured or sold by signatory producers/exporters. The Department will accept written comments, not to exceed 15 pages, from all parties no later than 7 days after the date of receipt of such producer/exporter information.

If the Department, after reviewing all submissions, determines that such arrangement circumvents the basis of the Agreement, it may, as it deems appropriate, utilize one of two options: (a) the amount of the effective price discount resulting from such arrangement shall be reflected in the NV in accordance with section D.2(5) of this Agreement or (b) the Department shall determine that the Agreement has been violated and take action according to the provisions under section E.

(6) The Department may reject any information submitted after the deadlines set forth in this Agreement or any information which it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may calculate normal value and/or U.S. price based on facts available, as it determines appropriate, unless the Department determines that section E applies.

E. Violations of the Agreement

If the Department determines that the Agreement is being or has been violated or no longer meets the requirements of section 734 (b) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the regulations.

F. Other Provisions

In entering into the Agreement, the signatory producers/exporters do not admit that any sales of the merchandise subject to this Agreement have been made at less-than-fair-value or that the methodology used in the Department's preliminary determination to calculate antidumping margins is appropriate.

G. Termination

(1) Any signatory producer/exporter may withdraw its participation in the Agreement at any time upon notice to the Department, after which the Department may terminate the Agreement. Such withdrawal shall be effective 60 days after such notice is given to the Department. Upon termination, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

(2) Absent affirmative determinations under the five-year review provisions of sections 751 and 752 of the Act, the Department expects to terminate this Agreement and the underlying investigation no later than five years from the effective date of the Agreement.

H. Definitions

For purposes of the Agreement, the following definitions apply:

(1) U.S. Price: The amount determined by the Department under section 772 of the Act.

(2) Normal Value: The amount determined by the Department under section 773(e) of the Act.

(3) Producer/Exporter: This term means (1) the foreign manufacturer or producer or (2) the foreign producer or reseller which also exports, as defined in section 771(28) of the Act.

(4) Date of Sale: This term means the date on which the material terms are set. For purposes of this definition, requirements contracts are deemed to establish a fixed quantity. Any change in price or change in terms or conditions that impacts price will be deemed to have established a new date of sale.

(5) Affiliated Purchasers: This term shall be interpreted consistent with section 771(33) of the Act.

(6) The effective date of the Agreement is the date on which it is published in the Federal Register.

For Japanese Producers/Exporters.

Masuda Chemicals Industries Co., Ltd.

Kenneth G. Weigel, Esq.,
Kirkland & Ellis

Date

Toyo Kasei Kogyo Co., Ltd.

Name: Matsuhei Kametaka,
Title: Director, General Manager.

Nippon Carbide Industries Company, Inc.

Date

Name: N. Kaneke
Title:

Dates

For U.S. Department of Commerce.

Robert S. LaRussa,
Assistant Secretary for Import Administration.

Dates

Appendix A: Reporting U.S. Sales

I. U.S. Sales Records

A. Each signatory shall report all of their U.S. shipments of sodium azide products sold in the United States during the reporting period by type including, but not limited to, the following types: (1) Pharmaceutical sodium azide, (2) ground airbag sodium azide, and (3) unground airbag sodium azide.

B. Below is a model record layout for reporting U.S. sales. Additional fields should be added to the model record, as necessary, to provide complete information on each shipment. Each shipment will be reported as a record in a electronic file. Each record will contain complete information identifying the sale and all adjustments related to the sale.

Field No.	Field Description	Field Name
1.0	Complete Product Code	PRODCODU
2.0	Matching Control Number	CONNUMU
3.0	Type of Transaction	TTYPEU
3.1	Particle Size	PARTICLU
3.2	Silicon Dioxide	SIO2U
4.0	Sale Type	SALEU
5.0	Customer Code	CUSCODU
6.0	Customer Category	CUSCATU
7.0	Date of Sale	SALEDTU
8.0	Shipment Number	INVOICU
10.0	Date of Shipment	SHIPDTU
11.0	Date of Receipt of Payment	PAYDTU
12.0	Quantity of Shipment	QTYU
12.1	Quantity Unit of Measure	QTUMU
13.0	Gross Unit Price	GRSUPRU
14.0	Discounts	EARLPYU
15.0	Rebates	REBATEU
16.0	Inland Freight—Plant from Grinder	DINLFRGU
16.1	Inland Freight—Plant/Warehouse to Port of Exit	DINLFTPU
17.0	Destination	DESTU
18.0	Credit Expense	CREDITU
19.0	Duty Drawback	DTYDRWU
20.0	Packing Cost	PACKU
21.0	Net U.S. Sales Price	NETUPRU

II. Net U.S. Sales Price

A. Net U.S. Sales Price, reported in field 21.0 above, will be calculated either as Export Price (''EP'') , the price at which the subject merchandise is sold to the first unaffiliated buyer when the sale occurs prior to the importation, or as constructed export price (''CEP''), the price at which the sale occurs subsequent to importation. Net U.S. Sales Price shall be calculated using the following values weight averaged by product (''CONNUMU'') as follows:

Gross Unit Price

LESS:

Price adjustments (14.0, 15.0)

Movement Expenses

PLUS:

Duty Drawback

B. A Net Weighted Average U.S. Sales Price shall be calculated for the reporting period for each product type for use in determining compliance with the Agreement.

Appendix B: Cost Reporting

I. General

The cost information reported to the Department for purposes of the Agreement must be:

—Comprehensive in nature, based on the company's accounting system, and able to be tied to the company's audited financial statements;
—Representative of the company's costs incurred to produce the specific models subject to this Agreement;
—Calculated on a semi-annual, weighted-average basis of the plants or cost centers manufacturing the product;
—Based on fully-absorbed costs of production, including any downtime;
—Valued in accordance with generally accepted accounting principles;
—Reflective of appropriately allocated common costs so that the costs necessary for the manufacturing of the product are not absorbed by other products; and
—Reflective of the actual cost of producing the product.

A. Cost of Manufacturing (''COM'')

(1) Cost of manufacturing is reported by major cost categories. Weighted-average costs are used for a product that is produced at more than one facility based on the cost at each facility.

(2) Direct materials—costs of those materials which are input into the production process and physically become part of the final product.

(3) Direct labor—labor costs identified with a specific product. These costs are not allocated among products except when two or more products are produced at the same cost center. Direct labor costs should include salary,

bonus, and overtime pay, training expenses, and all fringe benefits.

(4) Factory overhead—overhead costs including indirect materials, indirect labor, depreciation, and other fixed and variable expenses attributable to a production line or factory. Because overhead costs are typically incurred for an entire production line, an appropriate portion of those costs must be allocated to covered products, as well as any other products produced on that line. Acceptable cost allocations can be based on labor hours or machine hours. Overhead costs should also reflect any idle or downtime and be fully absorbed by the products.

(5) Grinding cost is the cost paid for the grinding of the product type which includes transportation to and from the processor.

(6) Grinding loss is the cost incurred as a result of product lost in the grinding process.

B. Cost of Production (''COP'')

(1) Cost of production is equal to the sum of materials, labor, and overhead (''COM'') plus SG&A expenses in the home market (''HM'').

(2) G&A expenses are those expenses incurred for the operation of the corporation as a whole and not directly related to the manufacture of a particular product. They include corporate general and administrative expenses, financing expenses and research and development expenses. G&A expenses should be the ratio of the company's total G&A expenses relative to total cost of sales for the most recently completed fiscal year that corresponds to the reporting period.

(3) Selling expenses are those expenses incurred in selling the specific products in the home market calculated by product type (''CONNUM'').

C. Constructed Value (''CV'')

(1) Constructed value is equal to the COP plus profit in accordance with section 773 of the Act.

(2) Profit—HM profit shall be calculated based on HM sales of sodium azide, in accordance with 773(e) of the Act.

(3) Cost of Packing—the cost of materials, labor and overhead and all other expenses incidental for preparing the product for shipment to the U.S. in accordance with section 773(e).

II. Reporting Cost of Production Data

A. Each signatory shall report costs for all of the sodium azide products sold in the United States during the reporting period including, but not limited to, the following types: (1) Pharmaceutical sodium azide, (2) ground airbag sodium azide, and (3) unground airbag sodium azide.

B. This information shall be reported for each sodium azide product in an electronic file. Additional fields should be added to the record described below as necessary. Worksheets should be submitted showing the calculation of each of the per unit costs and expenses.

Field No.	Field Description	Field Name
1.0	Matching Control Number	CONNUM
2.0	Production Quantity	PRODQTY
3.0	Direct Materials Cost	DIRMAT
4.0	Direct Labor Cost	DIRLAB
5.0	Variable Overhead Cost	VOH
6.0	Fixed Overhead Cost	FOH
7.0	Grinding Cost	GRINDING
8.0	Grinding Loss	GYL
9.0	Total Cost of Manufacturing	TOTCOM
10.0	General and Administrative Expenses	GNA
11.0	Interest Expense	INTEX
12.0	Indirect Selling Expense	INDSEL
13.0	Profit	PROFIT
14.0	HM Credit Expense	HMCREDIT
15.0	Direct Selling Expenses	DIRSELL

III. NV Based on Constructed Value

(1) For EP NVs, the CV will be adjusted for packing costs and differences in direct selling expenses such as commissions, credit, warranties, technical services, advertising, and sales promotion, in accordance with sections 772 and 773 of the Act.

(2) For CEP NVs, the NV will be calculated in accordance with the relevant statutory and regulatory provisions, including sections 772 and 773 of the Act.

(3) Direct selling expenses in either the U.S. or the home market are expenses that are incurred as a direct result of a sale.

(4) Credit expenses are expenses incurred for the extension of credit to the HM and U.S. customers.

IV. Calculation of NV Based on Constructed Value

Normal value for EP transactions will be calculated for pharmaceutical sodium azide, unground airbag sodium azide and ground airbag sodium azide as follows:

Direct Materials

+Direct Labor Cost
+Overhead Cost
+Grinding Cost (if relevant)
+*Grinding Loss* (if relevant)
=Cost of Manufacture
+General & Administrative Expenses (including financing)
+Home Market Indirect Selling Expense
+*Home Market Direct Selling Expense*
=Cost of Production
+Home Market Profit
+*U.S. Packing*
=Constructed Value

-Home Market Direct Selling Expense
-Home Market Credit Expense
+U.S. Direct Selling Expense
+*U.S. Credit Expense*
=Normal Value

[FR Doc. 97–297 Filed 1–6–97; 8:45 am]
BILLING CODE 3510–DS–P

Centers for Disease Control and Prevention; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and

Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–108. *Applicant:* Centers for Disease Control and Prevention, Atlanta, GA 30333. *Instrument:* Mass Spectrometer, Model Reflex II. *Manufacturer:* Bruker Analytical, Germany. *Intended Use:* See notice at 61 FR 55972, October 30, 1996.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) a data digitizer operating at 1.0 GHz, (2) a POSIX-compliant computer interface and (3) a gridless reflector design. The National Institutes of Health advises in its memorandum dated October 21, 1996 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–300 Filed 1–6–97; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–072R. *Applicant:* Penn State University, 118 Research Building West, University Park, PA 16802. *Instrument:* Nano Indentor System, Model UMIS 2001. *Manufacturer:* CISRO, Australia. *Intended Use:* Original notice of this resubmitted application was published in the Federal Register of August 12, 1996.

Docket Number: 96–076R. *Applicant:* University of Illinois at Urbana-Champaign, Purchasing Division, 506 South Wright Street, 207 Henry Administration Building, Urbana, IL 61801. *Instrument:* Eye Tracking System, Model EYELINK. *Manufacturer:* SR Research Ltd., Canada. *Intended Use:* Original notice of this resubmitted application was published in the Federal Register of August 12, 1996.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–299 Filed 1–6–97; 8:45 am]

BILLING CODE 3510–DS–P

Santa Rosa Outpatient Rehabilitation Hospital, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 95–080R. *Applicant:* Santa Rosa Outpatient Rehabilitation Hospital, San Antonio, TX 78229. *Instrument:* 3-Dimensional Motion Analyzer System, Model VICON 370. *Manufacturer:* Oxford Metrics, Ltd., United Kingdom. *Intended use:* See notice at 60 FR 48506, September 19, 1995. *Reasons:* The foreign instrument provides: (1) infra-red based light emitting diodes for marker recognition, (2) autoidentification of joint centers from exo-skeletal markers and body segment measurements and (3) exact synchronization of position and force data used in inverse dynamic analysis.

Docket Number: 96–098. Applicant: University of Arizona Foundation, Tucson, AZ 85721. *Instrument:* Noble Gas Mass Spectrometer, Model 215–50. *Manufacturer:* Mass Analyser Products Ltd., United Kingdom. *Intended use:* See notice at 61 FR 54156, October 17, 1996. *Reasons:* The foreign instrument provides: (1) a Baur type ion source with high sensitivity and linearity, (2) static-mode isotopic analysis of He, Ne, Ar, Kr and Xe and (3) vacuum pressure $<10^{-9}$ torr with background specified as mass 36 and 132 M/e 36 $<5\times10^{-14}$ cm^3 STP and M/e 132 $<10^{-15}$ cm^3 STP.

Docket Number: 96–099. Applicant: University of South Carolina, Columbia, SC 29208. *Instrument:* Stopped-Flow Spectrophotometer, Model SX.18MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended use:* See notice at 61 FR 54156, October 17, 1996. *Reasons:* The foreign instrument provides: (1) a dead volume of 310 µl, (2) a single 150W xenon light source and (3) fully automated mixing capability under computer control.

Docket Number: 96–107. *Applicant:* University of Minnesota, Minneapolis, MN 55455. *Instrument:* Three (3) Mass Spectrometers, MAT Models 262, ELEMENT and 252. *Manufacturer:* Finnigan MAT, Germany. *Intended use:* See notice at 61 FR 55973, October 30, 1996. *Reasons:* The foreign instruments comprise a suite of compatible mass spectrometers which employ: (1) magnetic sector mass analyzers, (2) either six Faraday multicollectors (models 252 and 262) or an analog/ion counting detector (model ELEMENT) and (3) automated preparation of samples resolvable to the femtogram level.

The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–301 Filed 1–6–97; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of

Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 96–119. *Applicant:* University of Pennsylvania, 3231 Walnut Street, Philadelphia, PA 19104–6272. *Instrument:* Electron Microscope, Model JEM–2010F. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to study the structure and chemistry of structural metals and alloys, fuel cell materials, conducting polymers, catalytic materials, dielectrics, ferroelectrics and composites. In addition, the instrument will be used for educational purposes in the graduate course, MSE610, Electron Microscopy by providing training in electron microscopy techniques. *Application accepted by Commissioner of Customs:* November 22, 1996.

Docket Number: 96–121. *Applicant:* State University of New York, P.O. Box 6000, Vestal Parkway East, Binghamton, NY 13902–6000. *Instrument:* Binocular Eye Tracking System, Model ET4. *Manufacturer:* AMTech, Germany. *Intended Use:* The instrument will be used for studies of two related phenomena: the fluency and seeming effortlessness of skilled reading, and oculomotor control in the reading task, where readers' eyes need to ''jump'' along lines of text to obtain new information. In addition, the instrument will be used for training of doctoral and undergraduate students in courses referred to as ''thesis credit'' and ''independent study''. *Application accepted by Commissioner of Customs:* November 22, 1996.

Docket Number: 96–122. *Applicant:* University of Nebraska-Lincoln, Chemistry Department, Lincoln, NE 68588–0304. *Instrument:* Diamond Anvil Cells, Model Diacell. *Manufacturer:* Diacell, United Kingdom. *Intended Use:* The instrument will be used to investigate the role of high pressure on solid state chemical reactions and phase transitions of solids. In particular, the research will involve study of high pressure on chemical reactions, phase transitions, the dynamics of the crystal lattice, electronic and magnetic properties, crystal structure, and solidification processes. *Application accepted by Commissioner of Customs:* November 22, 1996.

Docket Number: 96–123. *Applicant:* William Marsh Rice University, 6100 Main Street, Houston, TX 77005. *Instrument:* Stopped-Flow Fluorescence Spectrophotometer, Model SX.18MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* The instrument will be used for studies of the processes of protein-mediated DNA strand exchange that occur during genetic recombination; specifically, homologous genetic recombination directed by the RecA protein of *Escherichia coli.* These investigations will involve the use of recombinant proteins and synthetic DNA oligomers containing fluorescent analogs of the four natural bases. During these investigations, the instrument will be used for monitoring the rate of changes in either fluorescence emission intensity or absorbance of the nonnatural DNA analogs as they interact with the RecA protein and take part in the events of recombination. *Application accepted by Commissioner of Customs:* November 22, 1996.

Docket Number: 96–124. *Applicant:* Federal Highway Administration, Special Projects & Engineering Division, HNR–20, 6300 Georgetown Pike, McLean, VA 22101–2296. *Instrument:* ACFM Crack Microgauge, Model U9. *Manufacturer:* Technical Software Consultants, Ltd., United Kingdom. *Intended Use:* The instrument will be used to detect fatigue crack in welded steel girders. The speed, practicality, accuracy and reliability of the device for fatigue crack detection are compared with conventional techniques currently in use. Also, the equipment's ability to detect crack by its non-contact method is compared with contact methods available. *Application accepted by Commissioner of Customs:* November 26, 1996.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–298 Filed 1–6–97; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

The U.S. GOES Data Collection System (DCS) Application

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 10, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marlin O. Perkins, NOAA/NESDIS, Office of Satellite Data Processing and Distribution, Data Services Division, 5627 Allentown Road Suite 200, Code E/SP3, Camp Springs, MD 20233, telephone 301–763–8063 (Fax 301–763–8449).

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA's Geostationary Operational Environmental Satellite (GOES) Data Collection System (DCS) collects and transmits environmental data from remote platforms. NOAA allows other users access to any excess capacity on the system if they meet certain criteria, primarily that they are sponsored by another government agency and that no other adequate common carrier is available. NOAA needs a minimal amount of information from applicants to determine if their request for access meets the requirements as stated in 15 CFR Part 911(a)-(c).

II. Method of Collection

Applicants prepare narrative applications. No forms are used.

III. Data

OMB Number: 0648–0157.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: Individuals, businesses, not-for-profit institutions, Federal government, and State, local, or tribal governments.
Estimated Number of Respondents: 9.
Estimated Time Per Response: 3 hours.
Estimated Total Annual Burden Hours: 27 hours.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 2, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–288 Filed 1–6–97; 8:45 a.m.]

BILLING CODE 3510–12–P

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The NWS is publishing proposed certifications for the closure of the following Weather Service offices:

(1) Grand Island Weather Service Office (WSO), with services being provided by the future Hastings Weather Forecast Office (WFO);

(2) Residual St. Louis WSO, with services being provided by the future St. Louis WFO;

(3) Cape Hatteras WSO, with services being provided by the future Morehead City and Wakefield WFOs;

(4) Harrisburg WSO, with services being provided by the future Central Pennsylvania WFO;

(5) Residual New York City WSO, with services being provided by the future New York City WFO;

(6) Reading WSO, with services being provided by the future Philadelphia WFO;

(7) Apalachicola WSO, with services being provided by the future Tallahassee WFO;

(8) Athens WSO, with services being provided by the future Atlanta and Greenville/Spartanburg WFOs;

(9) Austin WSO, with services being provided by the future Austin/San Antonio, Dallas/Fort Worth, Houston/Galveston and San Angelo WFOs;

(10) Bristol WSO, with services being provided by the future Knoxville/Tri-Cities, Roanoke, and Charleston WFOs;

(11) Columbus, Georgia WSO, with services being provided by the future Birmingham, Tallahassee, and Atlanta WFOs;

(12) Del Rio WSO, with services being provided by the future Austin/San Antonio WFO;

(13) Fort Myers WSO, with services being provided by the future Tampa Bay Area WFO;

(14) Galveston WSO, with services being provided by the future Houston/Galveston WFO;

(15) Macon WSO, with services being provided by the future Atlanta and Tallahassee WFOs;

(16) Residual New Orleans WSO, with services being provided by the future New Orleans/Baton Rouge WFO;

(17) Orlando WSO, with services being provided by the future Melbourne WFO;

(18) Pensacola WSO, with services being provided by the future Mobile and Tallahassee WFOs;

(19) Port Arthur WSO, with services being provided by the future Lake Charles and Shreveport WFOs;

(20) Roswell WSO, with services being provided by the future Albuquerque and Midland/Odessa WFOs;

(21) Waco WSO, with services being provided by the future Dallas/Ft. Worth and Houston/Galveston WFOs;

(22) Bakersfield WSO, with services being provided by the future San Joaquin Valley WFO;

(23) Residual Billings WSO, with services being provided by the future Billings WFO;

(24) Eugene WSO, with services being provided by the future Portland and Medford WFOs;

(25) Helena WSO, with services being provided by the future Great Falls and Missoula WFOs;

(26) Klamath Falls WSO, with services being provided by the future Medford WFO;

(27) Residual Los Angeles WSO, with services being provided by the future Los Angeles WFO;

(28) Olympia WSO, with services being provided by the future Seattle/Tacoma and Portland WFOs;

(29) Residual Phoenix WSO, with services being provided by the future Phoenix WFO;

(30) Residual Reno WSO, with services being provided by the future Reno WFO;

(31) Salem WSO, with services being provided by the future Portland WFO;

(32) Winslow WSO, with services being provided by the future Flagstaff WFO;

In accordance with Public Law 102–567, the public will have 60 days in which to comment on these proposed closure certifications.

DATES: Comments are requested by March 10, 1997.

ADDRESSES: Requests for copies of the proposed closure packages should be sent to Tom Beaver, Room 09356, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1698 ext 151.

SUPPLEMENTARY INFORMATION: In accordance with section 706 of Public Law 102–567, the Secretary of Commerce must certify that these closures will not result in any degradation of service to the affected areas of responsibility and must publish the proposed closure certifications in the Federal Register. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist(s)-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action:

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Warning and forecast verification statistics for pre-modernized and modernized services which were utilized in determining that services have not been degraded;

(7) An Air Safety Appraisal, if applicable, for offices which are located on an airport; and

(8) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Public Law 102–567. In December 1995 the Committee decided that, in general, they would forego the optional consultation on proposed certifications. Instead, the Committee would just

review certifications after the public comment period had closed so their consultation would be with the benefit of public comments that had been submitted.

This notice does not include the complete certification packages because they are too voluminous to publish. Copies of the certification packages and supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certification. If a decision to certify is made, the Secretary of Commerce must publish the final certification in the Federal Register and transmit the certification to the appropriate Congressional committees prior to closing these offices.

Dated: December 31, 1996.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 97–223 Filed 1–6–97; 8:45 am]

BILLING CODE 3510–12–M

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The NWS is publishing proposed certifications for the automation and closure of the following Weather Service offices at the indicated FAA Weather Observation Service Level:

(1) Chicago-O'Hare (AV) Weather Service Office (WSO) which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Chicago Weather Forecast Office (WFO);

(2) Columbia WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future St. Louis, Kansas City/Pleasant Hill and Springfield WFOs';

(3) Detroit WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Detroit WFO;

(4) Flint WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Detroit WFO;

(5) Residual Moline WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Quad Cities WFO;

(6) Sioux City WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Sioux Falls and Omaha WFOs;

(7) Akron WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Cleveland, Pittsburgh, and Charleston, WV WFOs;

(8) Allentown WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Philadelphia, Binghamton and Central Pennsylvania WFOs;

(9) Atlantic City WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Philadelphia WFO;

(10) Baltimore WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Baltimore, MD/Washington D.C., Philadelphia and Wakefield WFOs. As the only field office in Maryland, an evaluation of services to in-state users, included in the meteorologist-in-charge's memorandum recommending certification, has concluded that users in Maryland are receiving equal or better services from the future Baltimore, MD/Washington D.C., Philadelphia and Wakefield WFOs.

(11) Residual Boston WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Boston WFO;

(12) Bridgeport WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future New York City WFO;

(13) Residual Charleston, West Virginia WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Charleston WFO;

(14) Columbus, Ohio WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Cincinnati, Cleveland, Pittsburgh, and Charleston, WV WFOs;

(15) Dayton WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Cincinnati WFO;

(16) Hartford WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Boston, New York City and Albany WFOs;

(17) Lynchburg WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Roanoke WFO;

(18) Mansfield WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Cleveland WFO;

(19) Norfolk WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Wakefield WFO;

(20) Residual Portland, Maine WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Portland, WFO;

(21) Providence WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Boston WFO. As the only field office in Rhode Island, an evaluation of services to in-state users, included in the meteorologist-in-charge's memorandum recommending certification, has concluded that users in Rhode Island are receiving equal or better services from the future Boston WFO.

(22) Residual Raleigh WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Raleigh/Durham WFO;

(23) Richmond WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Wakefield, Baltimore, MD/Washington D.C. and Roanoke WFOs;

(24) Roanoke WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Roanoke WFO;

(25) Toledo WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Cleveland and Cincinnati WFOs;

(26) Wilkes-Barre WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Binghamton and Central Pennsylvania WFOs;

(27) Williamsport WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Central Pennsylvania and Binghamton WFOs;

(28) Wilmington WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Philadelphia WFO. As the only field office in Delaware, an evaluation of services to in-state users, included in the meteorologist-in-charge's memorandum

recommending certification, has concluded that users in Delaware are receiving equal or better services from the future Philadelphia WFO.

(29) Worcester WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Boston WFO;

(30) Youngstown WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Cleveland and Pittsburgh WFOs;

(31) Residual Atlanta WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Atlanta WFO;

(32) Baton Rouge WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future New Orleans/Baton Rouge, Lake Charles and Jackson WFOs;

(33) Daytona Beach WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Melbourne and Jacksonville WFOs;

(34) Residual El Paso WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future El Paso WFO;

(35) Knoxville WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Knoxville/Tri-Cities and Nashville WFOs;

(36) Residual Lubbock WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Lubbock WFO;

(37) Montgomery WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Birmingham, Mobile and Tallahassee WFOs;

(38) Residual Oklahoma City WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Oklahoma City WFO;

(39) Residual San Antonio WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Austin/San Antonio WFO;

(40) Residual Tulsa WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future Tulsa WFO;

(41) West Palm Beach WSO which will be automated at FAA Weather Observation Service Level B and with services being provided by the future Miami and Melbourne WFOs;

(42) Residual San Diego WSO which will be automated at FAA Weather Observation Service Level A and with services being provided by the future San Diego WFO; and

(43) Stockton WSO which will be automated at FAA Weather Observation Service Level C and with services being provided by the future Sacramento WFO.

In accordance with Pub. Law 102–567, the public will have 60 days in which to comment on these proposed automation and closure certifications.

DATES: Comments are requested by March 10, 1997.

ADDRESSES: Requests for copies of the proposed automation and closure packages should be sent to Tom Beaver, Room 09356, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1698 ext 151.

SUPPLEMENTARY INFORMATION: In accordance with section 706 of Pub. Law 102–567, the Secretary of Commerce must certify that these automations and closures will not result in any degradation of service to the affected areas of responsibility and must publish the proposed automation and closure certification in the FR. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist(s)-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NMS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the ASOS Commissioning Report; series of three letters between NWS and FAA confirming that weather services will continue in full compliance with applicable flight aviation rules after ASOS commissioning; Surface Aviation Observation Transition Checklist documenting transfer of augmentation and backup responsibility from NWS to FAA; successful resolution of ASOS user confirmation of services complaints; and an in-place supplementary data program at the responsible WFO(s);

(7) Warning and forecast verification statistics for pre-modernized and modernized services which were utilized in determining that services have not been degraded;

(8) An Air Safety Appraisal for offices which are located on an airport; and

(9) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. Law 102–567. In December 1995 the Committee decided that, in general, they would forego the optional consultation on proposed certifications. Instead, the Committee would just review certifications after the public comment period had closed so their consultation would be with the benefit of public comments that had been submitted.

This notice does not include the complete certification packages because they are too voluminous to publish. Copies of the certification packages and supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certification. If a decision to certify is made, the Secretary of Commerce must publish the final certification in the FR and transmit the certification to the appropriate Congressional committee prior to automating and closing these offices.

Dated: December 31, 1996.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 97–224 Filed 1–6–97; 8:45 am]

BILLING CODE 3510–12–M

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The NWS is publishing proposed certifications for the consolidation, automation, and closure of the following Weather Service offices at the indicated FAA Weather Observation Service Level:

(1) Fargo Weather Service Office (WSO) which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the future Eastern North Dakota, Bismarck, Aberdeen, and Minneapolis Weather Forecast Offices (WFOs);

(2) Muskegon WSO which will be automated at FAA Weather Observation Service Level B and have its services consolidated into the future Grand Rapids and North Central Lower Michigan WFOs;

(3) Residual Rapid City WSO which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the future Rapid City WFO;

(4) Springfield WSO which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the future Central Illinois and St. Louis WFOs;

(5) Asheville WSO which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the future Greenville/Spartanburg, Knoxville/Tri-Cities, and Roanoke WFOs;

(6) Cincinnati WSO which will be automated at FAA Weather Observation Service Level A and have its services consolidated into the future Cincinnati WFO;

(7) Greensboro WSO which will be automated at FAA Weather Observation Service Level A and have its services consolidated into the future Raleigh/Durham, Greenville/Spartanburg, and Roanoke WFOs;

(8) Augusta WSO which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the future Columbia, Charleston, and Atlanta WFOs;

(9) Meridian WSO which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the future Jackson, Mobile, and Birmingham WFOs;

(10) Savannah WSO which will be automated at FAA Weather Observation Service Level B and have its services consolidated into the future Charleston, Jacksonville, Tallahassee, and Atlanta WFOs; and

(11) Lewiston WSO which will be automated at FAA Weather Observation Service Level C and have its services consolidated into the future Spokane, Pendleton, and Missoula WFOs.

In accordance with Pub. Law 102–567, the public will have 60-days in which to comment on these proposed consolidation, automation, and closure certifications.

DATES: Comments are requested by March 10, 1997.

ADDRESSES: Requests for copies of the proposed consolidation, automation and closure packages should be sent to Tom Beaver, Room 09356, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. all comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1698 ext 151.

SUPPLEMENTARY INFORMATION: In accordance with section 706 of Pub. Law 102–567, the Secretary of Commerce must certify that these consolidations, automations, and closures will not result in any degradation of service to the affected areas of responsibility and must publish the proposed consolidation, automation, and closure certification in the FR. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist(s)-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the WSR–88D Radar Commissioning Report(s), User Confirmation of Services Report(s), and the Decommissioning Readiness Report (as applicable);

(7) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the ASOS Commissioning Report; series of three letters between NWS and FAA confirming that weather services will continue in full compliance with applicable flight aviation rules after ASOS commissioning; Surface Aviation Observation Transition Checklist documenting transfer of augmentation and backup responsibility from NWS to FAA; successful resolution of ASOS user confirmation of services complaints; and an in-place supplementary data program at the responsible WFO(s);

(8) Warning and forecast verification statistics for pre-modernized and modernized service which were utilized in determining that services have not been degraded;

(9) An Air Safety Appraisal for offices which are located on an airport; and

(10) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. Law 102–567. In December 1995 the Committee decided that, in general, they would forego the optional consultation on proposed certification. Instead, the Committee would just review certification after the public comment period had closed so their consultation would be with the benefit of public comments that had been submitted.

This notice does not include the complete certification packages because they are too voluminous to publish. Copies of the certification packages and supporting documentation can be obtained through the contact listed above.

Once all public comment have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certification. If a decision to certify is made, the Secretary of Commerce must publish the final certification in the FR and transmit the certification to the appropriate Congressional committees prior to consolidating, automating, and closing these offices.

Dated: December 31, 1996.
Elbert W. Friday, Jr.,
Assistant Administrator for Weather Services.
[FR Doc. 97–225 Filed 1–6–97; 8:45 am]
BILLING CODE 3510–12–M

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The National Weather Service (NWS) is publishing proposed certifications for the proposed consolidations and closures of:

(1) Omaha Residual Weather Service Office (RWSO) which will have its services consolidated into the future Omaha Weather Forecast Office (WFO); and

(2) Sacramento RWSO which will have its services consolidated into the future Sacramento WFO. In accordance with Pub. Law 102–567, the public will have 60-days in which to comment on these proposed consolidation and closure certifications.

DATES: Comments are requested by March 10, 1997.

ADDRESSES: Requests for copies of the proposed consolidation and closure packages should be sent to Tom Beaver, Room 09356, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Julie Scanlon at 301–713–1698 ext 151.

SUPPLEMENTARY INFORMATION: In accordance with section 706 of Pub. Law 102–567, the Secretary of Commerce must certify that these consolidations and closures will not result in any degradation of service to the affected areas of responsibility and must publish the proposed consolidation and closure certifications in the FR. The documentation supporting each proposed certification includes the following:

(1) A draft memorandum by the meteorologist-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the WSR–88D Radar Commissioning Report(s), User Confirmation of Services Report(s), and the Decommissioning Readiness Report (as applicable);

(7) Warning and forecast verification statistics for pre-modernized and modernized services which were utilized in determining that services have not been degraded;

(8) An Air Safety Appraisal, if applicable, for offices which are located on an airport; and

(9) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. Law 102–567. In December 1995 the Committee decided that, in general, they would forego the optional consultation on proposed certifications. Instead, the Committee would just review certifications after the public comment period had closed so their consultation would be with the benefit of public comments that had been submitted.

This notice does not include the complete certification packages because they are too voluminous to publish. Copies of the certification packages and supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certifications. If decisions to certify are made, the Secretary of Commerce must publish the final certifications in the FR and transmit the certifications to the appropriate Congressional committees prior to consolidating and closing the offices.

Dated: December 31, 1996.
Elbert W. Friday, Jr.,
Assistant Administrator for Weather Services.
[FR Doc. 97–226 Filed 1–6–97; 8:45 am]
BILLING CODE 3510–12–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG97–16–000]

Amoco Power Finance (BVI) Limited; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

December 31, 1996.

Take notice that on December 19, 1996, Amoco Power Finance (BVI) Limited tendered for filing an amendment to its application for exempt wholesale generator status filed in the above-referenced docket on November 8, 1996.

Any person desiring to be heard concerning the amendment to the Application should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before January 10, 1997 and must be served on the Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.
[FR Doc. 97–205 Filed 1–6–97; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. GT97–16–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 31, 1996.

Take notice that on December 20, 1996, Columbia Gas Transmission Corporation (Columbia) tendered for filing Attachment A to the filing which details, by customer, the historical load factors calculated using total firm entitlements for the 12-month period ended October 31, 1996. Columbia proposes to charge its firm customers the GRI demand rate indicated by these

calculations, and any new customer added after January 1, 1997, will be billed GRI each month based on the actual throughput for each month of prior service until a 12-month history is established.

In Opinion 407, issued by the Commission on September 27, 1996, in Docket No. RP96–267–000, the Commission waived the requirements of individual pipeline tariffs so that presently effective tariff sheets reflecting the 1996 GRI funding surcharges need not be restated since the approved charges for 1997 are the same as the GRI charges approved for 1996. Nevertheless, Columbia is filing Attachment A so as to insure that the load factors resulting from its calculations are a matter of public record.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–206 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ97–3–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 31, 1996.

Take notice that on December 27, 1996 Eastern Shore Natural Gas Company (ESNG) tendered for filing certain revised tariff sheets in the above captioned docket as part of its FERC Gas Tariff, First Revised Volume No. 1, with a proposed effective date of January 1, 1997.

ESNG states that the revised tariff sheets included herein are being filed pursuant to Section 21 of the General Terms and Conditions of ESNG's Gas Tariff to reflect changes in ESNG's jurisdictional rates. The sales rates set forth herein reflect an increase of $0.6852 per dt in the Commodity Charge, as measured against ESNG's Out-Of-Cycle Quarterly PGA filing, Docket No. TQ97–2–23–000, *et al.*, filed on November 26, 1996 to be effective on December 1, 1996.

The commodity current purchased gas cost adjustment reflects ESNG's projected cost of gas for the month of January 1997, and has been calculated using its best estimate of available gas supplies to meet ESNG's anticipated purchase requirements. The increased gas costs in this filing are a result of higher prices being paid to producers/suppliers under ESNG's market-responsive gas supply contracts.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–221 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT97–17–000]

Equitrans L.P.; Notice of Proposed Changes in FERC Gas Tariff

December 31, 1996.

Take notice that on December 23, 1996, Equitrans, L.P. (Equitrans), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective January 1, 1997.

Fourth Revised Sheet No. 400
Fifth Revised Sheet No. 401

Equitrans states that this filing is made to update Equitrans' index of customers. In Order No. 581 the Commission established a revised format for the Index of Customers to be included in the tariffs of interstate pipelines and required the pipelines to update the index on a quarterly basis to reflect changes in contract activity. Equitrans requests a waiver of the Commission's notice requirements to permit the tariff sheet to take effect on January 1, 1997, the first calendar quarter, in accordance with Order No. 581.

Equitrans states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to be herd or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. in accordance with section 385.214 or 385.211 of the Commission's Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–207 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG97–12–000]

Hidro Iberica B.V.; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

December 31, 1996.

On December 30, 1996, Hidro Iberica B.V. (the ''Applicant'') whose address is 4e Etage, 3012 CA Rotterdam, The Netherlands, filed with the Federal Energy Regulatory Commission an amendment to its application (the ''Application'') for exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations, filed in the above-referenced Docket on November 4, 1996, as previously amended on December 11, 1996.

Any person desiring to be heard concerning the amendment to the Application should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. The Commission will

limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before January 10, 1997 and must be served on the Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–204 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–201–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 31, 1996.

Take notice that on December 23, 1996, National Fuel Gas Supply Corporation (National Fuel), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective April 1, 1997.

National Fuel states that this filing is submitted as a companion filing to its December 16, 1996 Order No. 587 compliance filing. National Fuel states that the purpose of this filing is to make certain changes intended to facilitate its compliance with Order No. 587 and to streamline its tariff and operations, including: (1) expedition of the nomination and scheduling process, (2) simplification of the allocation process, (3) contracts with operators of interconnecting facilities, (4) a new bulletin board system, (5) consolidation of provisions regarding requests for service, (6) removal of certain provisions relating to National Fuel's Order No. 636 restructuring, (7) timing of flowback credits, (8) removal of certain forms from the tariff, and (9) conversion of service under the SS–1 and SS–2 Rate Schedules to a dekatherm basis.

National Fuel states that it is serving copies of the filing with its firm customers, interested state commissions and each person designated on the official service list compiled by the Secretary. Copies are also being served on all interruptible customers as of the date of the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–222 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–202–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 31, 1996.

Take notice that on December 23, 1996, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective January 23, 1997:

First Revised Sheet No. 135D
Fourth Revised Sheet No. 144

Reason for Filing

Northern states that the purpose of this filing is to modify Northern's FDD and IDD Rate Schedules applicable to firm and interruptible storage services by providing increased service flexibility through the addition of eight (8) points available for receipt and delivery of storage services.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–216 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–306–001]

Paiute Pipeline Company; Notice of Motion To Place Suspended Rates Into Effect

December 31, 1996.

Take notice that on December 26, 1996, Paiute Pipeline Company (Paiute) filed a motion pursuant to Section 4(e) of the Natural Gas Act and Section 154.206(a) of the Commission's regulations to make effective on January 1, 1997, certain rates and a tariff sheet in connection with Paiute's request for general rate relief in Docket No. RP96–306–000. Specifically, Paiute has moved to place into effect on January 1, 1997, Fifth Revised Sheet No. 10 of Second Revised Volume No. 1–A of its FERC Gas Tariff.

Paiute states that on July 1, 1996, Paiute filed certain revised tariff sheets in this proceeding, pursuant to Section 4 of the Natural Gas Act, to implement a proposed general rate increase. Paiute further states that by order issued July 31, 1996, the Commission accepted Paiute's proposed rates and suspended their effectiveness for five months to become effective January 1, 1997, subject to refund. Paiute states that in its suspension order, the Commission accepted the proposed rates subject to the condition that Paiute revise its rates to remove the costs of facilities not placed in service as of December 31, 1996.

With its motion, Paiute submitted Fifth Revised Sheet No. 10. Paiute indicates that Fifth Revised Sheet No. 10, in accordance with the Commission's suspension order, sets forth the rates proposed by Paiute in its July 1, 1996, filing in this proceeding, modified to reflect the exclusion of costs associated with facilities which will not be placed in service as of December 31, 1996. Paiute also states that Fifth Revised Sheet No. 10 incorporates the change in the annual charge adjustment surcharge rate which was approved by the Commission in Docket Nos. TM97–1–41–000 and TM97–1–41–001 by orders issued September 27 and November 6, 1996 respectively. Paiute moves that Fifth Revised Sheet No. 10 be made effective January 1, 1997.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission,

888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–213 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG97–11–000]

PMDC Netherlands B.V.; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

December 31, 1996.

On December 30, 1996, PMDC Netherlands (the ''Applicant'') whose address is 4e Etage, 3012 CA Rotterdam, The Netherlands, filed with the Federal Energy Regulatory Commission an amendment to its application (the ''Application'') for exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations, filed in the above-referenced Docket on November 4, 1996, as previously amended on December 11, 1996.

Any person desiring to be heard concerning the amendment to the Application should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before January 10, 1997 and must be served on the Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–203 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP 97–203–000]

Questar Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 31, 1996.

Take notice that on December 23, 1996, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 81A, First Revised Sheet No. 82 and Original Sheet No. 82A, to be effective January 1, 1997.

Quester explains that the proposed tariff sheets revise Section 12.13 of the General Terms and Conditions of Part I of Questar's tariff by incorporating tariff language that will implement a mechanism for tracking fuel-use and lost-and-unaccounted-for gas. Questar states that it has submitted its fuel tracker filing pursuant to paragraph III B(5) of its March 8, 1996, rate case settlement agreement in Docket No. RP95–407, approved by Commission order issued July 1, 1996. Questar has requested waiver of 18 CFR 154.207 so that the proposed tariff sheets may become effective January 1, 1997, consistent with its Docket No. RP95–407 settlement agreement.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–217 Filed 1-6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–205–000]

Sabine Pipe Line Company; Notice of Compliance Filing

December 31, 1996.

Take notice that on December 24, 1996, Sabine Pipe Line Company (Sabine) tendered for filing as part of its FERC gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets proposed to be effective January 1, 1997:

Title Page
1st Rev Original Sheet No. 245
Original Sheet No. 248A
1st Rev Original Sheet No. 265

Sabine states that it is submitting the referenced tariff sheets to comply with Order No. 582 issued September 28, 1995, in Docket No. RM95–3–000. The tariff revisions include a statement of Sabine's rate discount policy (Tariff Sheet No. 248A) and other miscellaneous compliance changes.

Sabine respectfully requests that the Commission grant a waiver of Section 154.207 of its Regulations, and any other waivers that may be necessary, in order that the tariff sheets be made effective on January 1, 1997 as proposed.

Sabine states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–219 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–199–000]

Shell Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 31, 1996.

Take notice that on December 23, 1996, Shell Gas Pipeline Company (SGPC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets set forth on Appendix A to the filing, to become effective January 1, 1997.

SGPC states that the purpose of this filing is to comply with Order Nos. 582

and 582–A, issued September 28, 1995 in Docket No. RM95–3, in which the Commission revised, reorganized and updated its regulations governing the form composition, and filing of rates and tariffs for interstate pipeline companies.

Specifically SGPC indicates the tendered tariff sheets revise its tariff to:

(1) Update Title page in accordance with 154.102(d) to include a mailing address, telephone number and facsimile number. SGPC is also updating its area code from 713 to 281 (as required by the Texas Public Utility Commission) on this and other applicable sheets;

(2) expand the table of contents to include the sections of the general terms and conditions in accordance with section 154.104;

(3) add a statement for SGPC's discount policy in accordance with section 154.109(c);

(4) delete the index of customers from the tariff in accordance with section 154.111(a);

(5) update references throughout the tariff to the updated sections of the Commission's Regulations that have been changed;

(6) add a statement to SGPC's general terms and conditions for periodic reports in accordance with section 154.502; and

(7) change the rates to reflect a thermal unit in accordance with section 154.107(b).

SGPC submits that the Commission should grant it all waivers necessary to place these provisions into effect January 1, 1997.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 and 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions and protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–214 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–166–000]

Southern Natural Gas Company, Tennessee Gas Pipeline Company; Notice of Application

December 31, 1996.

Take notice that on December 23, 1996, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563 and Tennessee Gas Pipeline Company (Tennessee) (jointly referred to as Applicants), 1010 Milam Street, P.O. Box 2511, Houston, Texas, 77252-2511, filed in Docket No. CP97–166–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service between Applicants, which was authorized in Docket No. G–4715, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants propose to abandon an exchange service between themselves under Southern's Rate Schedule X–8 and Tennessee's Rate Schedule X–2. Applicants state that the exchange service was last utilized in May, 1993. Applicants assert that there is no outstanding imbalance. Applicants further state that by letter agreement, both parties to the exchange service have agreed to terminate the exchange.

Any person desiring to be heard or to make protest with reference to said application should on or before January 21, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–202 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–151–000, RP94–39, RP94–127, RP94–197, RP94–309, RP94–425, RP95–89, RP95–368, RP95–451, RP96–85, RP96–195, RP96–297, RP97–7, RP93–148, RP95–62, RP96–73, RP94–222, RP94–202, RP94–309, and RP95–112]

Tennessee Gas Pipeline Company; Notice of Conference

December 31, 1996.

Take notice that an informal conference will be convened in this proceeding on Thursday, January 16, 1997, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of discussing the draft settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald Williams at (202) 208–0743 or Dennis H. Melvin at (202) 208–0042.

Lois D. Cashell,

Secretary.

[FR Doc. 97–212 Filed 1–6–97; 8:45 am]

BILLING CODE 6712–01–M

[Docket No. RP97-200-000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 31, 1996.

Take notice that on December 23, 1996, Tennessee Gas Pipeline Company tendered for filing as part of its Fifth Revised FERC Gas Tariff the following tariff sheets to become effective February 1, 1997:

Thirteenth Revised Sheet No. 20
Fifteenth Revised Sheet No. 21A

Twentieth Revised Sheet No. 22
Fifteenth Revised Sheet No. 22A
Twelfth Revised Sheet No. 23
Seventh Revised Sheet No. 23B
Seventeenth Revised Sheet No. 24
Twelfth Revised Sheet No. 25
Thirteenth Revised Sheet No. 26B

Tennessee states that the purpose of the filing is to recover gas supply realignment costs (GSR costs) paid or known and measurable at the time of the filing, consistent with the GSR cost recovery provisions reflected in Section XXVI of the General Terms and Conditions of Tennessee's Fifth Revised FERC Gas Tariff. The charges include a GSR demand surcharge applicable to firm customers and a unit GSR component applicable to Tennessee's interruptible services.

Tennessee is proposing to amortize the costs reflected in this filing over the five-month period necessary to maintain the level of the existing firm GSR surcharges and is seeking any necessary waivers of the Commission's regulations and its tariff provisions to effectuate the same. In the event that the requested waivers are not granted, Tennessee has also submitted herewith the following alternate tariff sheets to be effective February 1, 1997:

Alternate Thirteenth Revised Sheet No. 20
Alternate Fifteenth Revised Sheet No. 21A
Alternate Twentieth Revised Sheet No. 22
Alternate Fifteenth Revised Sheet No. 22A
Alternate Twelfth Revised Sheet No. 23
Alternate Seventh Revised Sheet No. 23B
Alternate Seventeenth Revised Sheet No. 24
Alternate Twelfth Revised Sheet No. 25
Alternate Thirteenth Revised Sheet No. 26B

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file with the Commission a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–215 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–206–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 31, 1996.

Take notice that on December 26, 1996, Texas Gas Transmission Corporation (Texas Gas) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of February 1, 1997:

Nineteenth Revised Sheet No. 10
Third Revised Sheet No. 10A
Sixteenth Revised Sheet No. 11
Third Revised Sheet No. 11B

Texas Gas herein adjusts its February 1, 1997, rates to remove the ISS Revenue Credit Adjustment which expires January 31, 1997. The impact of this rate change is to increase Rate Schedules NNS and FT daily demand rates by $0.0001 and Rate Schedule SGT rates by $0.0002.

Texas Gas states that copies of this filing have been served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–220 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–204–000]

Young Gas Storage Company, Ltd., Notice of Proposed Changes in FERC Gas Tariff

December 31, 1996.

Take notice that on December 23, 1996, Young Gas Storage Company, Ltd. (Young), tendered for filing to become part of its FERC Gas Tariffs, Original Volume No. 1 the tariff sheets listed on attached Appendix A to the filing, to be effective December 31, 1996.

Young states that the purpose of this compliance filing is to conform Young's tariff to the requirements of Order No. 582.

Young further states that copies of this filing have been served on Young's jurisdictional customers and public bodies.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–218 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11437–001 North Carolina]

Hydro Matrix Partnership, Ltd; Notice of Availability of Draft Environmental Assessment

December 31, 1996.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for license for the proposed Jordan Hydroelectric Project, located on the Haw River, Chatham County, North Carolina, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2A, of the Commission's offices at

888 First Street, NE., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 11437 to all comments. For further information, please contact Mark Pawlowski, Environmental Coordinator, at (202) 219–2795.

Lois D. Cashell,

Secretary.

[FR Doc. 97–210 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Ready for Environmental Analysis

December 31, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: New Major License.

b. Project No.: 1984-056.

c. Date filed: January 25, 1996.

d. Applicant: Wisconsin River Power Company.

e. Name of Project: Petenwell and Castle Rock Hydroelectric Project.

f. Location: On the Wisconsin River in Adams, Juneau, and Wood Counties, Wisconsin.

g. Filed pursuant to: Federal Power Act, 16 USC 791(a)–825(r).

h. Applicant Contact: Richard L. Hilliker, President, Wisconsin River Power Company, P.O. Box 8050, Wisconsin Rapids, WI 54495–8050, (715) 422-3722.

i. FERC Contact: Frank Karwoski at (202) 219-2782.

j. Deadline Date: See standard paragraph D10.

k. Status of Environmental Analysis: This application has been accepted for filing and is ready for environmental analysis at this time.

l. Description of Project: The Petenwell and Castle Rock project consists of the 20–MW Petenwell Development and the 15–MW Castle Rock Development. Together these developments provide average annual generation of about 200,000 Mwh. Wisconsin River Power Company (WRPCo) is owned by Consolidated Water Power Company (CWPCo), Wisconsin Public Service Corporation (WPSC), and Wisconsin Power & Light Company (WP&L). These owners each use about one-third of the project's power.

Project operation and administration is provided by CWPCo. Maintenance and plant surveillance is provided by WRPCo. The project is operated on a seasonal basis for flood control, power generation, and recreation enhancement. The Petenwell Development is operated in a peaking mode when river flows fall below the development's hydraulic capacity, although it is generally operated such that daily average outflows equal inflows. The reservoir's water level varies seasonally to provide for flood control, reservoir recreation, and downstream power production. The Castle Rock Development is operated in a modified run-of-river mode allowing some peaking superimposed on a base-level flow and providing for a recreation flow through the Wisconsin Dells.

Petenwell Development—The Petenwell Development consists of: (1) a reservoir with a drainage area of 5,800 square miles, a normal surface area of 25,180 acres and a storage volume of 495,000 acre-feet at the normal operating water surface elevation of 923.9 feet NGVD which is controlled by Petenwell Dam located at river mile 171.9 on the Wisconsin River in Wisconsin; (2) and East Dike which is 7,000 feet long and 20 feet high with top width of 12 feet at a crest elevation of 933.9 feet NGVD and side slopes of 2.5H: 1V, constructed of compacted sand with riprapped upstream face; (3) an East Dam which is 8,000 feet long and 50 feet high with top width of 12 feet at a crest elevation of 933.9 feet NGVD and side slopes of 2.5H:1V, constructed of compacted sand with riprapped upstream face and gravel toe drains; (4) a West Dike which is five miles long and 20 feet high with top width of 12 feet at a crest elevation of 933.9 feet NGVD and side slopes of 2.5H:1V, constructed of compacted sand with riprapped upstream face; (5) a West Dam which is 500 feet long and 50 feet high with top width of 12 feet at a crest elevation of 933.9 feet NGVD and side slopes of 2.5H:1V, constructed of compacted sand with riprapped upstream face and gravel toe drains; (6) a 525-foot-long concrete overflow spillway with 30-foot-deep sheetpile cutoff and a crest elevation of 905.9 feet NGVD, with 15 radial gates, each 30 feet wide and 18 feet high, operated by individual hydraulic cylinder hoists and separated by concrete piers; (7) a regulating bay containing one electric chain hoist operating a 30-foot-wide by 18-foot-high radial gate and a stilling basin separated from the rest of the spillway by a concrete wall; (8) a 159-foot-long powerhouse with 110-foot-wide concrete substructure, including intake and draft tubes, 50-foot-wide masonry superstructure and truss supported roof, containing four turbine/generating units having a total rated capacity of 20 MW and total hydraulic capacity of 6,720 cfs, protected by trashracks with 4.5-inch openings; (9) four S. Morgan Smith 110-inch diameter four-blade vertical Kaplan turbines with rated head of 41 feet and rated output of 7,200 horsepower, operating at 163.6 rpm and controlled by Woodward type H.R. governors rated at 60,000 ft-lbs; (10) four vertical General Electric synchronous generators operating at 163.6 rpm with power factor of 0.8 rated at 6,250 KVA; (11) a switchyard containing two Westinghouse 6.9/138 Kv power transformers rated at 15 MVA; and (12) accessory equipment including a 50-ton overhead traveling crane in the powerhouse, two gantry cranes, a compressed air system, spillway bubbler system, and a battery bank.

Castle Rock Development—The Castle Rock Development consists of: (1) a reservoir with a drainage area of 6,870 square miles, a normal surface area of 14,900 acres and a storage volume of 136,000 acre-feet at the normal operating water surface elevation of 881.9 feet NGVD which is controlled by Castle Rock Dam located at river mile 156.7 on the Wisconsin River in Wisconsin; (2) an East Dike which is 3.3 miles long and less than 25 feet high with top width of 12 feet at a crest elevation of 891.4 feet NGVD and side slopes of 2.5H:1V, constructed of compacted sand with riprapped upstream face; (3) an earth dam which is 1,400 feet long and 45 feet high with top width of 12 feet at a crest elevation of 891.4 feet NGVD and side slopes of 2.5H:1V, constructed of compacted sand with riprapped upstream face and gravel toe drains; (4) a saddle dike which is 500 feet long; (5) a 590-foot-long concrete overflow spillway with 35-foot-deep sheetpile cutoff and a crest elevation of 863.4 feet NGVD with 17 radial gates, each 30 feet wide and 18 feet high, operated by individual hydraulic cylinder hoists and separated by concrete piers; (6) a regulating bay containing one electric chain hoist operated 30-foot-wide by 18-foot-high radial gate and stilling basin separated from the rest of the spillway by a concrete wall; (7) a 193-foot-long powerhouse with 107-foot-wide concrete substructure, including intake and draft tubes, 50-foot-wide masonry superstructure and truss supported roof, containing five turbine/generating units having a total rated capacity of 15 MW and total hydraulic capacity of 7,520 cfs protected by trashracks with 4.5-inch openings; (8) five S. Morgan Smith 110-

inch diameter four-blade vertical Kaplan turbines with rated head of 28 feet and rated output of 4,370 horsepower operating at 150 rpm; (9) five vertical Allis Chalmers synchronous generators operating at 150 rpm with power factor of 0.8 rated at 3,750 KVA; (10) a switchyard containing two 4.2/69 Kv power transformers rated at 15 MVA; (11) accessory equipment including a 34-ton overhead traveling crane in the powerhouse, two gantry cranes, a compressed air system, spillway bubbler system, and a battery bank; and (12) three parcels of land owned by the United States comprising a total of 3.71 acres.

m. Purpose of Project: Project power would be provided to CWPCo, WPSC, and WP&L; who would either use the power or utilize it for sale to their customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Washington, DC 20426 or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Richard L. Hilliker, President, Wisconsin River Power Company, P.O. Box 8050, Wisconsin Rapids, WI 54495–8050, (715) 422–3722.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 Fed. Reg. 23108 (May 20, 1991)), that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting and filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to: Director, Division of Licensing and Compliance, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Lois D. Cashell,

Secretary.

[FR Doc. 97–208 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Ready for Environmental Analysis

December 31, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Minor License.

b. Project No.: P–11428–000.

c. Date Filed: August 5, 1993.

d. Applicant: The City of St. Louis, Michigan.

e. Name of Project: Municipal Dam Hydro Project.

f. Location: On the Pine River, in The City of St. Louis, Gratiot County, Michigan.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Nancy Roehrs, 108 West Saginaw Street, St. Louis, MI 48880, (517) 681–2137.

i. FERC Contact: Ed Lee, (202) 219–2809.

j. Deadline Date: See paragraph D9.

k. Status of Environmental Analysis: This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.

l. Description of Project: The existing project consists of the following: (1) A 21-foot-high, 126-foot-long reinforced concrete dam surmounted by six 19-foot-wide, 8-foot-high radial gates; (2) a 60-foot-long left embankment, 55-foot-long center embankment, and 250-foot-long right embankment; (3) a 1,575-acre-foot reservoir at a normal water surface elevation of 719 feet; (4) a gated 18-foot-wide, 12-foot-deep intake flume; (5) a powerhouse containing two generating units rated at 225-kW for a total installed capacity of 450-kW; (6) a tailrace; (7) a short 2400-volt transmission line; and (8) appurtenant electric and mechanical facilities. The applicant estimates the average annual generation for this project would be 1,599 MWh. The dam and existing project facilities are owned by the applicant.

m. This notice also consists of the following standard paragraphs: A4 and D9.

n. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2A–1, Washington, DC 20426, or by calling (202) 208–2326. A copy is also available for inspection and reproduction at the City of St. Louis, 108 Saginaw Street, St. Louis, MI 48880, or by calling (517) 681–2137.

o. Scoping Process: In gathering background information for preparation of the environmental document for the issuance of a Federal hydropower license, staff of the Federal Energy Regulatory Commission, is using a scoping process to identify significant environmental issues related to the construction and operation or the continued operation of hydropower projects. The staff will review all issues raised during the scoping process and identify issues deserving of study and also deemphasize insignificant issues, narrowing the scope of the environmental analysis as well. If preliminary analysis indicates that any issues presented in the scoping process would have little potential for causing significant impacts, the issue or issues

will be identified and the reasons for not providing a more detailed analysis will be given.

p. Request for Scoping Comments: Federal, state, and local resource agencies; licensees, applicants and developers; Indian tribes; other interested groups and individuals, are requested to forward to the Commission, any information that they believe will assist the Commission staff in conducting an accurate and thorough analysis of the site-specific and cumulative environmental effects of the proposed licensing activities of the project(s). Therefore you are requested to provide information related to the following items:

- Information, data, maps or professional opinion that may contribute to defining the geographical and temporal scope of the analysis and identifying significant environmental issues.
- Identification of and information from any other EIS or similar study (previous, on-going, or planned) relevant to the proposed licensing activities in the subject river basin.
- Existing information and any data that would aid in describing the past and present effects of the project(s) and other developmental activities on the physical/chemical, biological, and socioeconomic environments. For example, fish stocking/management histories in the subject river, historic river quality data and the reasons for improvement or degradation of the quality, and wetland habitat loss or proposals to develop land and water resources within the basin.
- Identification of any federal, state or local resource plans and future project proposals that encompass the subject river or basin. For example, proposals to construct or operate water treatment facilities, recreation areas, or implement fishery management programs.
- Documentation that would support a conclusion that the project(s) *does not* contribute, or *does* contribute to adverse and beneficial cumulative effects on resources and therefore should be excluded from further study or excluded from further consideration of cumulative impacts within the river basin. Documentation should include, but not be limited to: how the project(s) interact with other projects within the river basin or other developmental activities; results from studies; resource management policies; and, reports from federal, state, and local agencies.

Comments concerning the scope of the environmental document should be filed by the deadline established in paragraph D9.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS'', or ''PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Lois D. Cashell,

Secretary.

[FR Doc. 97–209 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

Notice of Application Ready for Environmental Analysis

December 31, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 11162–002.

c. *Date filed:* April 18, 1994.

d. *Applicant:* Wisconsin Power and Light Company.

e. *Name of Project:* Prairie du Sac Hydroelectric Project.

f. *Location:* On the Wisconsin River in Dane, Sauk, and Columbia Counties, Wisconsin.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Norman E. Boys, Vice President, Power Production, Wisconsin Power and Light Company, P.O. Box 192, 222 West Washington Avenue, Madison, WI 53701–0192, (608) 252–3311.

i. *FERC Contact:* Frank Karwoski at (202) 219–2782.

j. *Deadline Date:* See standard paragraph D10.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of Project:* The 29–MW Prairie du Sac Hydroelectric Project provides average annual generation of 151,800 MWh when operated in run-of-river mode. Wisconsin Power & Light Company has operated the project in a run-of-river mode since 1978 and proposes to continue this mode of operation.

The project consists of: (1) a reservoir with a normal surface area of 9,180 acres and a storage volume of 119,950 acre-feet at the normal operating water surface elevation of 744.4 feet NGVD; (2) an east dike which is 1,775 feet long with an average height of 20 feet and top width of 8 feet at a crest elevation of 781.0 feet NGVD, and side slopes of 2H:1V, constructed of sand with a clay core wall having a top width of 3 feet at elevation 770.4 feet NGVD; (3) a 1,010-foot-long concrete hollow ogee spillway supported on piles with a crest elevation of 760.4 feet NGVD, 41 radial

gates, each 20 feet wide and 14 feet high, separated by concrete piers 4-feet thick, two traveling electric hoists, and a concrete walkway at elevation 781.4 feet NGVD; (4) an unused concrete navigation lock which is 211 feet long by 35 feet wide by 47 feet high with split leaf vertical lock gates at each end; (5) a 329-foot-long pile-supported powerhouse with concrete substructure, masonry superstructure and truss supported roof, containing eight turbine/generating units having a total rated capacity of 29 MW; (6) eight 4-runner horizontal Francis turbines with diameters of 64 inches and rated head of 32 feet installed between 1914 and 1922 (four have ratings of 4,050 horsepower, two of 5,600 horsepower, and one of 5,000 horsepower); (7) eight horizontal Allis-Chalmers generators operating at 120 rpm with power factor of 0.8 (four are rated at 4,375 kVA, two at 6,000 kVA, one at 3,525 kVA and one at 2,590 kVA); (8) two 69–kV transmission lines approximately 400 feet long; (9) accessory equipment including relays, switchboards, sensors, panels, cubicles, synchronizing units, supervisory control equipment, lighting, station service power, plumbing, ventilating systems, and a compressed air system; and (10) maintenance buildings, offices, and equipment.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street NE., Washington, DC 20426 or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Power and Light Company, P.O. Box 192, 222 West Washington Avenue, Madison, WI 53701–0192, (608) 252–3311.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108 (May 20, 1991)), that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' TERMS AND CONDITIONS,'' OR ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting and filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. An additional copy must be sent to: Director, Division of Licensing and Compliance, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 5A–01, at the above address. Each filing must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Lois D. Cashell,

Secretary.

[FR Doc. 97–211 Filed 1–6–97; 8:45 am]

BILLING CODE 6717–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 9, 1997, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

Regulations

1. Capital Adequacy and Customer Eligibility [12 CFR Parts 613, 614, 615, 618, 619, and 620] (Final)

2. General Financing Agreement [12 CFR Part 614] (Proposed)

3. Loan Underwriting Standards [12 CFR Parts 614 and 619] (Final)

Dated: January 2, 1997

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 97–406 Filed 1–3–97; 3:05 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Thursday, January 9, 1997

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 9, 1997, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, Subject

1—Cable Services—Title: Closed Captioning and Video Description of Video Programming and Implementation of Section 305 of the Tele-communications Act of 1996: Video Programming Accessibility (MM Docket No. 95–176). Summary:

The Commission will consider action concerning closed captioning requirements for video programming.

2—Office of Engineering and Technology—Title: Amendment of the Commission's Rules to Provide for Operation of Unlicensed NII Devices in the 5 GHZ Frequency Range (ET Docket No. 96–102, RM–8648 & RM–8653). Summary: The Commission will consider action to make available 300 megahertz of spectrum in the 5.15–5.35 GHz and 5.725–5.825 GHz bands for broadband U-NII devices.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Public Affairs, telephone number (202) 418–0500.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax numbers (202) 857–3805 or (202) 857–3184. These copies are available in paper format and alternative media which includes, large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its—inc@ix.netcom.com. Their internet address is: http://www.itsi.com.

Audio and video tapes of this meeting can be obtained from the Office of Public Affairs, Television Staff, telephone (202) 418–0460 or TTY (202) 418–1388; fax numbers (202) 418–2809 or (202) 418–7286. This meeting can be viewed over George Mason University's Capitol Connection. For information on this service call (703) 993–3100. The meeting can be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770; and from Conference Call USA (available only outside the Washington, DC metropolitan area), telephone 1–800–962–0044.

Dated January 2, 1997.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–425 Filed 1–3–97; 2:29 pm]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

[Docket No. 96–24]

Adtranz (North America), Inc. Individually, and as Successor in Interest to ABB Traction, Inc. v. UniTrans International, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by ADtranz (North America), Inc. individually, and as successor in interest to ABB Traction, Inc. (''Complainant'') against UniTrans International, Inc. (''Respondent'') was served December 31, 1996. Complainant alleges that Respondent has violated sections 10(b)(1), (b)(5) and (d)(1) of the Shipping Act of 1984, 46 U.S.C. app. sections 1709(b)(1), (b)(5), and (d)(1), by demanding greater or different compensation for the transportation of property than the rates and charges shown in its tariff and by retaliating against Complainant through attempting to rerate cargo, billing a third party (i.e., the cargo's manufacturer), filing a court case and arresting and attaching cargo, all because Complainant patronized another carrier.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by December 31, 1997, and the final decision of the Commission shall be issued by April 30, 1998.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–227 Filed 1–6–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of November 13, 1996

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on November 13, 1996.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that growth in economic activity slowed substantially in the third quarter, and the limited available information indicates continued moderate expansion more recently. Private nonfarm payroll employment increased appreciably on balance over September and October. The civilian unemployment rate remained at 5.2 percent in October. Industrial production, which continued to rise in the third quarter, appears to have declined in October owing in important measure to work stoppages in the motor vehicles industry. Total retail sales turned up in September after slumping earlier in the summer. Housing starts fell in September from the exceptionally high level registered in August. Outlays for business equipment were strong in the third quarter and new orders continued to trend upward; business spending on nonresidential structures posted a moderate advance. Inventory investment was substantial in the third quarter, but inventory-sales ratios remained relatively low. The nominal deficit on U.S. trade in goods and services widened considerably in July-August from its average rate in the second quarter. Increases in labor compensation, though moderating in the third quarter, have trended up this year; consumer price inflation also has picked up this year, owing to larger increases in food and energy prices.

Market interest rates have moved lower since the Committee meeting on September 24, 1996, with the largest declines occurring in intermediate- and long-term maturities. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies has depreciated slightly over the intermeeting period.

Growth of M2 in September and October remained below its pace in the first half of the year, while expansion of M3 was substantially higher over those two months. For the year through October, M2 is estimated to have grown at a rate in the upper half of the Committee's annual range, and M3 at a rate around the top of its range. Expansion in total domestic nonfinancial debt has been moderate on balance over recent months and has remained in the middle portion of its range.

[1] Copies of the Minutes of the Federal Open Market Committee meeting of November 13, 1996, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in July reaffirmed the ranges it had established in January for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1995 to the fourth quarter of 1996. The monitoring range for growth of total domestic nonfinancial debt was maintained at 3 to 7 percent for the year. For 1997 the Committee agreed on a tentative basis to set the same ranges as in 1996 for growth of the monetary aggregages and debt, measured from the fourth quarter of 1996 to the fourth quarter of 1997. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, somewhat greater reserve restraint would or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with moderate growth in M2 and relatively strong expansion in M3 over coming months.

By order of the Federal Open Market Committee, December 27, 1996.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 97-250 Filed 1-6-97; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0491]

Agency Information Collection Activities: Proposed Collection; Reinstatement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements for premarket approval applications (PMA's) that are submitted under part 814 (21 CFR part 814).

DATES: Submit written comments on the collection of information requirements by March 10, 1997.

ADDRESSES: Submit written comments on the collection of information requirements to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Margaret R. Wolff, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Premarket Approval of Medical Devices—Part 814 (OMB Control Number 0910–0231—Reinstatement)

Section 515 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e) sets forth requirements for premarket approval of certain medical devices. Under section 515 of the act, an application must contain several pieces of information, including: Full reports of all information concerning investigations showing whether the device is safe and effective; a statement of components; a full description of the methods used in, and the facilities and controls used for, the manufacture and processing of the device; and labeling specimens. The implementing regulations, contained in part 814, further specify the contents of a PMA for a medical device and the criteria FDA will employ in approving, denying, or withdrawing approval of a PMA. The purpose of these regulations is to establish an efficient and thorough procedure for FDA's review of PMA's for class III (premarket approval) medical devices, in order to facilitate the approval of PMA's for devices that have been shown to be safe and effective and otherwise meet the statutory criteria for approval and to ensure the disapproval of PMA's for devices that have not been show to be safe and effective and that do not otherwise meet the statutory criteria for approval.

Under § 814.15, an applicant may submit in support of a PMA studies from research conducted outside the United States, but an applicant must explain in detail any differences between standards used in a study to support the PMA's and those standards found in the Declaration of Helsinki. Section 814.20 provides a list of information required in the PMA, including: A summary of information in the application, a complete description of the device, technical and scientific information, and copies of proposed labeling. Section 814.37 provides requirements for an applicant who seeks to amend a pending PMA. Under § 814.39, an applicant must submit a supplement to the PMA before making a change affecting the safety or effectiveness of the device. Section 814.82 sets forth postapproval requirements FDA may propose, including periodic reporting on safety,

effectiveness, and reliability, and display in the labeling and advertising of certain warnings. Section 814.84 specifies the contents of periodic reports. Section 814.82 requires the maintenance of records to trace patients and the organizing and indexing of records into identifiable files to enable FDA to determine whether there is reasonable assurance of the device's continued safety and effectiveness. The applicant determines what records should be maintained during product development to document and/or substantiate the device's safety and effectiveness. Records required by the current good manufacturing practices for medical devices regulation (21 CFR part 820) may be relevant to a PMA review and may be submitted as part of an application. In individual instances, records may be required to be maintained as conditions of approval to ensure the device's continuing safety and effectiveness.

Respondents to this information collection are persons filing an application with the Secretary of Health and Human Services for approval of a Class III medical device. Part 814 defines a person as any individual, partnership, corporation, association, scientific or academic establishment, government agency or organizational unit, or other legal entity. These respondents include manufacturers of commercial medical devices in distribution prior to May 28, 1976 (the enactment date of the Medical Device Amendments).

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.15, 814.20, and 814.37	545	1	545	837.28	456,320
814.39	545	1	545	73.15	39,865
814.82	545	1	545	9.14	4,983
814.84	545	1	545	18.29	9,966
Total Hours					511,134

There are no capital costs or operating and maintenance costs associated with this collection of information.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
814.82(a)(5) and (a)(6)	567	1	567	16.7	9,469
Total					9,469

There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 31, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–291 Filed 1–6–97; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Committee Name: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel (Telephone Conference Call).

Date: January 6, 1997.

Place: Natcher Building, Room 6AS–25F, National Institutes of Health, 45, Center Drive, Bethesda, Maryland 20892-6600.

Contact Person: Lakshmanan Sankaran, Ph. D., Scientific Review Administrator, Natcher Building, Room 6AS–25F, National Institutes of Health, 45 Center Drive, Bethesda, Maryland 20892-6600; Phone: 301-594-7799.

Agenda/Purpose: To review and evaluate a research grant application.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Application and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: December 26, 1996.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 97–319 Filed 1–2–97; 4:43 pm]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Notice of amendment to Approved Tribal-State Compact

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved Amendment II to the Tribal-State Compact for Regulation of Class III Gaming Between The Klamath Tribes and the State of Oregon, which was executed on November 13, 1996.

DATES: This action is effective January 7, 1997.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240 (202) 219–4068.

Dated: December 26, 1996.

Elizabeth L. Homer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–245 Filed 1–6–97; 8:45 am]

BILLING CODE 4310–02–P

Indian Gaming; Notice of Approved Second Amendment to Tribal-State Compact

AGENCY: Bureau of Indian Affairs, Interior.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Second Amendment to the Tribal-State Gaming Compact Between the Swinomish Indian Tribal Community and the State of Washington executed on October 4, 1996.

DATES: This action is effective January 7, 1997.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240 (202) 219–4068.

Dated: December 26, 1996.

Elizabeth L. Homer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–244 Filed 1–6–97; 8:45 am]

BILLING CODE 4310–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–001)]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Solar System Exploration Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Solar System Exploration Advisory Subcommittee.

DATES: Wednesday, January 15, 1997, 8:30 a.m. to 5:00 p.m.; Thursday, January 16, 1997, 8:30 a.m. to 5:00 p.m.; and Friday, January 17, 1997, 8:30 a.m., 4:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, MIC Room 6H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Jurgen Rahe, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2150.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Office of Space Science Activities
—Board of Directors Overview
—Reserch Program Management Overview
—Advanced Technology and Mission Studies Overview
—Mission and Payload Development, Overview
—Roadmap to the Solar System
—Future Activities

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to a sign a visitor's register.

Dated: January 2, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 97–289 Filed 1–6–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Scientific Computing; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing (#1185)

Date and Time: January 24, 1997, 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1150, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. John Van Rosendale, Program Director, New Technologies Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1962.

Purpose of Meeting: To provide recommendations and advice concerning proposals submitted NSF for financial support.

Agenda: Panel review of CISE Postdoctoral Research Associates in Computational Science and Engineering proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–273 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Astronomical Sciences (1186); Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Astronomical Sciences (1186) will be holding panel meetings for the purpose of reviewing proposals submitted to the Career Program in the area of Astronomical Sciences. In order to review the large volume of proposals, panel meetings will be held on January 30–31, 1997, (2). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 8:30 AM to 5:00 PM each day.

Contact Person: Dr. James P. Wright, Program Director, Education, Human Resources, and Special Programs, Division of Astronomical Sciences, National Science Foundation, Room 1030, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1819.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–271 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Bioengineering and Environmental System; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Bioengineering and Environmental Systems.

Date and Time: January 26–27, 1997; 8:30 am–5;00 pm

Place: National Science Foundation, 4201 Wilson Boulevard, Room 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Barbara P. Kearn, Program Director, Environmental Technology, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CAREER proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–263 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems.

Date and Time: January 22-24, 1997; 8:30 am-5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Edward H. Bryan, Program Director, Environmental Engineering, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CAREER proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–264 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Chemistry (#1191).

Date and Time: January 28–29, 1997.

Place: Room 1060, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Margaret Cavanaugh, Program Director, Inorganic, Bioinorganic, Organometallic Chemistry, Chemistry Division, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1842.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the Faculty Early Career Development Program (CAREER) as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–268 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Civil and Mechanical Systems (#1205).

Date and Time: January 30–31, 1997; 8:00 a.m. to 5:00 p.m.

Place: Arlington Hilton, 950 North Stafford Street, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Dr. S.C. Liu, Program Director for Structural Systems, Dr. Cliff Astill, Siting & Geotechnical System & Dr. William Anderson, Earthquake Systems Integration, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1362.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Earthquake Centers proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–260 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: January 27 and January 28, 1997; 8:30 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 580, Arlington, Virginia.

Contact Person: Dr. Devendra P. Garg, Program Director, Dynamic Systems & Control Program, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1361, x 5068.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–272 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross Disciplinary Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross Disciplinary Activities (1193).

Date and Time: January 24, 1997; 8:30 a.m.–5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1120, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person(s): Rita V. Rodriguez, Program Director, CISE/CDA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate CISE Postdoctoral Research Associates in Experimental Computer Science proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–262 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications System; Notice of Meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Electrical and Communications Systems (1196)

Date ans Time: January 27–28, 8:30 a.m. to 5:00 p.m.

Place: Room 365, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA

Type of Meeting: Closed.

Contact Person: Dr. Radhakisan Baheti, Program Director, Systems Theory, Division of Electrical and Communications Systems, Room 675, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1340

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate System Theory career proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietory or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–259 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Sepcial Emphasis Panel in Information, Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent (1200).

Date and Time: January 27-28, 1997, 8:30 a.m. to 5:00 p.m.

Place: Doubletree Hotel Pentagon, 300 Army Navy Drive, Arlington, VA 22202.

Type of Meeting: Closed.

Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306-1929.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Robotics and Machine and Intelligence Program Career proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–269 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Information, Robotics and Intelligent (1200).

Date and Time: January 31, 1997, 8:30 a.m. to 5:00 p.m.

Place: Hyatt Arlington, 1325 Wilson Boulevard, Arlington, VA 22209–9990.

Type of Meeting: Closed.

Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1929.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Interactive Systems Program Career proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–270 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research #1203.

Dates and Times: 1/28–29/97, 8:00 am–6:00pm and 1/30–31/97, 8:am–5:00pm

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 320 & 340 and 380 & 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Ulrich Strom, Program Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230; Telephone (703) 306–1832.

Purpose of Meeting: To provide advice and recommendations concerning CAREER proposals submitted to the Condensed Matter Physics Program.

Agenda: Evaluation of career proposals.

Reason for Closing: The proposals being reviewed includes information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–257 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (DMR) #1203

Date and Time: January 28, 1997, 8:00 am–5:00 pm.

Place: National Science Foundation; 4201 Wilson Blvd., Arlington, VA; Room 1020.

Type of Meeting: Closed.

Contact Person: Dr. Liselotte J. Schioler, Program Director, Ceramics Program, Division of Materials Research, Room 1065, National Science Foundation, Arlington, VA 22230. Telephone (703) 306–1836.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate proposals as part of the selection process to determine finalists considered for Cermanic CAREER awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–261 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Networking and Communications (#1207).

Date and Time: January 27, 28 & 29, 1997; 8:30 a.m. to 5:00 p.m.

Place: Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person(s): Aubrey Bush, Deputy Division Director, CISE/NCRI, Room 1175, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted for the Career Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–265 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research, Evaluation and Communication; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research, Evaluation and Communication.

Date and Time:

January 30, 1997; 8:30 a.m. to 6:00 p.m.
January 31, 1997; 9:00 a.m. to 4:30 p.m.

Place: Room 1285, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Christopher J. Dede, Program Director, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. Telephone (703) 306–1651.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to Career Program.

Reason for Closing: Because the proposals reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–266 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research, Evaluation and Communication; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research, Evaluation and Communication.

Date and Time:

January 27, 1997; 8:30 a.m. to 6:00 p.m.
January 28, 1997; 9:00 a.m. to 4:30 p.m.

Place: Room 1280, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Christopher J. Dede, Program Director, 4201 Wilson Boulevard, Room 855, Arlington, VA 22230. Telephone (703) 306–1651.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals and provide advice and recommendations as part of the selection process for proposals submitted to the Research on Education, Policy and Practice (REPP) Program.

Reason for Closing: Because the proposals reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–267 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Division of Undergraduate Education.

Date and Time:

January 29, 1997; 7:30 p.m. to 9:00 p.m.
January 30, 1997; 8:30 a.m. to 5:00 p.m.
January 31, 1997; 8:30 a.m. to 5:00 p.m.
February 1, 1997; 8:30 a.m. to 2:00 p.m.
February 5, 1997; 7:30 p.m. to 9:00 p.m.
February 6, 1997; 8:30 a.m. to 5:00 p.m.
February 7, 1997; 8:30 a.m. to 5:00 p.m.
February 8, 1997; 8:30 a.m. to 2:00 p.m.

Place: The Doubletree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

Type of Meeting: Closed.

Contact Person: Dr. Duncan McBride, Section Head; Dr. Daniel Hodge, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 306–1666.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Instrumentation and Laboratory Improvement Panel Meeting.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as

salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c)(4) and (6) of the Government in the Sunshine Act.

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–274 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

United States Antarctic Program (USAP) Blue Ribbon Panel; Notice of Meeting

In accordance with the Federal advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: United States Antarctic (USAP) Program Blue Ribbon Panel (5131)

Date and Time: 1997. January 31, 8 am–6 pm; February 1, 8:30 am–6 pm

Place: NSF, room 1235

Type of Meeting: Open

Contact Person: Guy G. Guthridge, Office of Polar Programs, Room 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: (703) 306–1031

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: Examine a full range of infrastructure, management, and scientific options for the United States Antarctic Program so that the Foundation will be able to maintain the high quality of the research and implement U.S. policy in Antarctica under realistic budget scenarios.

Agenda: Draft panel report to NSF

Dated: January 2, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–258 Filed 1–6–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Consumers Power Company, Big Rock Point Nuclear Power Plant; Notice of Receipt and Availability for Comment of Post Shutdown Decommission Activities Report and Notice of Public Meeting

[Docket No. 50–155]

The U.S. Nuclear Regulatory Commission (NRC) is in receipt of and is making available for pubic inspection and comment the Post-Shutdown Decommissioning Activities Report (PSDAR) for the Big Rock Point Nuclear Power Plant (BRP) located 4 miles northeast of Charlevoix, Michigan. A public meeting on the BRP PSDAR will be held in the Charlevoix Town Hall on Tuesday, March 4, 1997, at 7:00 p.m.

The operating license for BRP will expire on May 31, 2000. Consumers Power Company (CPC) submitted the BRP Decommissioning Plan (DP) dated February 27, 1995, to the NRC in accordance with NRC regulations in effect at that time. The NRC conducted a public meeting regarding the BRP DP on May 11, 1995, at which CPC presented its plan for decommissioning BRP. By letter dated February 14, 1996, the licensee requested that the review of the DP be delayed pending further notice by CPC. Amendments to the NRC's decommissioning regulations were published in the Federal Register on July 29, 1996 (61 FR 39278) and became effective on August 28, 1996. By letter dated September 5, 1996, to the NRC, CPC discussed the effect of the amended regulations and acknowledged that the BRP DP, as supplemented, was considered to be the BRP PSDAR pursuant to 10 CFR 50.82, as amended.

The public meeting, required by 10 CFR 50.82(a)(4)(ii), is informational and will include a presentation by the NRC staff on the changes to the decommissioning regulations resulting from the final rule published on July 29, 1996. The meeting will also provide an opportunity for the licensee to update it's planned decommissioning activities for BRP. A question and answer period will follow the presentations.

The BRP PSDAR is available for public inspection at the BRP local public document room (LPDR), located at the North Central Michigan College, 1515 Howard Street, Petosky, Michigan 49770, and at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20037. The BRP PSDAR is filed as the BRP Decommissioning Plan (NUDUCS microfiche accession number 9503020323). A transcript of the May 11, 1996, public meeting regarding the BRP DP is also available as NUDOCS microfiche accession number 9506210181.

Comments regarding the BRP PSDAR may be submitted in writing and addressed to Mr. Paul W. Harris, Project Manager, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 telephone number (301) 415–1169. Comments previously submitted in writing regarding the BRP DP will be considered by the NRC and need not be resubmitted.

Dated at Rockville, Maryland, this 31st day of December 1996.

For the Nuclear Regulatory Commission.

Michael T. Masnik,

Acting Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–248 Filed 1–6–97; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Specifications for Information Based Indicia Program ''Host Systems''; Correction

AGENCY: Postal Service.

ACTION: Correction to Notice of proposed specifications with request for comments.

SUMMARY: The original notice (61 FR 55676; October 28, 1996) included incorrect dates. Additionally, the Postal Service will be hosting a general meeting on the Host System specification. All persons who have expressed an interest in the proposed specifications will be invited to attend the meeting. This meeting will focus solely on technical aspects of the Host System specification.

The **DATES** section is corrected to read as follows:

DATES: Comments on the specification must be received on or before March 15, 1997. Comments addressing intellectual property issues must be received on or before March 15, 1997. The general meeting on this subject is being planned for January 31, 1997, in Washington, DC. Interested parties may submit questions by January 17, 1997, which will be considered for incorporation into the meeting presentation.

FOR FURTHER INFORMATION CONTACT: Terry Goss (202) 268–3757.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–249 Filed 1–6–97; 8:45 am]

BILLING CODE 7710–12–P

Information Based Indicia Program Interim Product Submission Procedures

AGENCY: Postal Service.

ACTION: Notice of proposed procedures with request for comments.

SUMMARY: There are approximately 1.5 million postage meters in use in the United States, which collectively account for approximately $20 billion in postal revenue annually. For several years the Postal Service has been

actively pursuing a solution of the problem of inadequate postage meter security. To respond to the threat of fraudulent use of meters by physical tampering, the Postal Service intends to decertify and remove from the market, in risk-driven phases, all mechanical and electro-mechanical postage meters. Another problem the Postal Service has faced is that currently available meter indicia are susceptible to counterfeiting. The Postal Service is exploring using current technology special purpose units such as computers and independent printers to provide prepaid postage. This notice describes interim product submission procedures for the Information Based Indicia Program (IBIP) which the Postal Service is developing to support these corrective efforts.

DATES: Comments on the proposed procedures must be received on or before February 6, 1997.

ADDRESSES: Copies of the all draft specifications published to date under the Information Based Indicia Program may be obtained from: Terry Goss, United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington, DC 20260–6807, (202)–268–3757. Mail or deliver written comments to: Manager, Retail Systems and Equipment, United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260–6807. Copies of all written comments may be inspected and photocopied between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Terry Goss, (202) 268–3757.

SUPPLEMENTARY INFORMATION: The Information Based Indicia Program (IBIP) is a Postal Service initiative supporting the development and implementation of a new form of postage indicia. The Postal Service envisions that the new indicium standard may eventually support new or existing products and services. Specific products and services have not been determined. An IBIP indicium (Federal Register Volume 61 Number 128 Tuesday, July 2, 1996) substitutes for a postage stamp or a postage meter imprint as evidence of the fact that postage has been paid on mailpieces. An IBIP Postal Security Device indicium (Federal Register Volume 61 Number 128 Tuesday, July 2, 1996) provides cryptographic signature, financial accounting, indicium creation, device authorization, and audit functions. An IBIP Host System indicium (Federal Register Volume 61 Number 209 Monday, October 28, 1996) creates the indicium using data provided by the Postal Security Device and the user, supports communications with the vendor's infrastructure, provides a user interface, employs current postage rates, supports use of standardized addresses, and maintains records regarding host system use.

The goal for IBIP is to provide an environment in which customers can apply postage through new technologies that improve postal revenue security. This requires a new form of postage indicia and the adoption of standards to facilitate industry investment and product development.

The manufacture and use of postage meters is governed by Postal Service regulations (see 39 CFR Part 501; Domestic Mail Manual P030). With the development of new proposed specifications under the IBI Program that increases product security along with integrating advances in technology, a new approach to product submission is required. This new interim approach for product submission procedures covers product/devices intended to meet IBIP specifications. Please note this proposed procedure applies to product service providers of IBI products/devices. It does not apply to users of IBI product/devices nor producers of mail bearing the IBI as a form of evidence of postage.

As explained in detail below, there are nine steps proposed for the Interim IBIP product submission process. These steps are entitled: (1) Letter of Intent, (2) Non-Disclosure Agreements, (3) Concept of Operations, (4) Documentation Requirement, (5) Vendor Infrastructure Plan, (6) Product Submission/Testing, (7) Vendor Infrastructure Testing, (8) Field Test (Beta) Approval (Limited Distribution), and (9) Vendor/Product Approval (Full Distribution).

The proposed Interim IBIP product submission procedures [Draft] include nine steps:

A. Letter of Intent

1. The vendor must submit a letter of intent to the Manager, Retail Systems and Equipment (RSE), United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260–6807. Include in this letter of intent (a) Date of correspondence, (b) Name and address of parties involved in the proposal: manufacturer, assembly, distribution, and management of the product/device, (c) Name and phone number of official point of contact for each company identified, (d) Proposed manufacturers' business qualifications (i.e., certifications and representations, proof of ability to be responsive and responsible), (e) a product/device concept narrative, (f) a vendor infrastructure concept narrative, and (g) the target Postal Service market segment the proposed IBIP product/device is envisioned to serve.

2. The vendor must submit with the letter of intent a proposed IBIP product/device development plan of actions and milestones (POA&M) with a start date coinciding with the date of the letter of intent.

B. Non-Disclosure Agreements

The vendor must sign non-disclosure agreements with the Postal Service and its agents. These agreements are intended to assure confidentiality and fairness in business.

C. Concept of Operations

The vendor must submit a ''Concept of Operations'' (CONOPS) that discusses at a moderate level of detail the features and usage conditions for the proposed product/device. Vendors should provide five hard copies and one electronic copy on a PC-formatted 3.5'' floppy disk. The CONOPS should cover the following areas at a minimum:

1. System Overview

(a) Concept Overview/Business Model
(b) Concept of Production Administration
(c) PC Postage System (hardware/software)
  (1) Features
  (2) Components
(d) Product Lifecycle Overview
(e) Adherence to Industry Standards

2. Proposed PC Postage System Components—Details

(a) Postal Security Device Features and Functions
(b) Host System Features and Functions
(c) Other components required for normal use conditions

3. Proposed PC Postage Product Lifecycle

(a) Manufacture
(b) USPS certification of product/device
(c) Production
(d) Distribution
(e) Product/device licensing and registration
(f) Initialization
(g) Product/Device Authorization and Installation
(h) Postage Value Download (PVD) process
(i) Product audits (Device and Host System)
(j) Inspections (print quality assurance)
(k) Device/Product Withdrawal/Replacement
  (1) Overall process
  (2) Product failure/malfunction procedures

(l) Scrapped device process

4. Finance Overview

(a) Customer account (lock box) management
  (1) Coupon acquisition
  (2) Payment
  (3) Statement of Account
  (4) Refund
(b) Individual product finance account management
  (1) Postage Value Download
  (2) Refund
(c) Daily account reconciliation
  (1) Vendor reconciliation
  (2) USPS detailed transaction reporting
(d) Periodic summaries
  (1) Monthly reconciliation
  (2) Other reporting

5. Interfaces

(a) Communications and message interfaces with Postal Infrastructure
  (1) PVDs
  (2) Scanning Support
  (3) Support for Mailpiece spoils
  (4) Refunds
  (5) Inspections (print quality assurance)
  (6) Product Audits
  (7) Lost or Stolen Procedures
(b) Communications and message interfaces with USPS financial institutions
  (1) Postage refill
  (2) Daily Account reconciliation
  (3) Deposit slip management
  (4) Refunds
(c) Communications and message interfaces with Customer Infrastructure
  (1) Key Management
  (2) Product Audits (Device and Host System)
  (3) Inspections (print quality assurance)
(d) Message Error Detection and Handling

6. Technical Support and Customer Service

(a) User Training and Support
(b) Software Configuration Management (CM) and update procedures
(c) Hardware CM and update procedures

7. Other

(a) Postal Rate Change Procedures
(b) ZIP+4 CD updates
(c) Physical Security
(d) Personnel Security

Appendix A Security Features

The CONOPS must be accompanied by substantiated market analysis supporting the target Postal Service market segment the proposed IBIP product/device is envisioned to serve as identified in the Letter of Intent.

D. Documentation Requirements

1. The vendor must submit to the Postal Service a detailed design document of the product/device. FIPS 140–1 Appendix A provides a checklist summary of documentation requirements for the FIPS 140–1 standard. Additionally, the Postal Service requires design documentation which includes, but is not limited to, the following:

(a) Full source code of all software involved in the IBIP Postal Security Device and the IBIP Host System,
(b) Operations manuals for product usage,
(c) Interface description documents for all proposed communications interfaces,
(d) Maintenance manuals,
(e) Schematics,
(f) Product initialization procedures,
(g) Finite state machine models/ diagrams,
(h) Block diagrams,
(i) Security features descriptions, and
(j) Cryptographic operations descriptions.

Detailed references for much of this documentation is listed in FIPS 140–1 Appendix A. The Postal Service will determine the number of copies needed of the aforementioned documentation based on review of the CONOPS.

2. The vendor must submit a test plan that, if passed by a product/device, provides compliance by the product/ device with all Postal Service requirements and FIPS 140–1 requirements, as applicable to IBIP. The test plan must list the parameters to be tested, test equipment, procedures, test sample sizes, and test data formats. Also, the plan must include detailed descriptions, specifications, design drawings, schematic diagrams, and explanations of the purposes for all special test equipment and non-standard or non-commercial instrumentation. Finally, this test plan must include a proposed schedule of major test milestones.

E. Vendor Infrastructure Plan

The Vendor must submit a Vendor Infrastructure Plan which describes how you will meet or enforce the processes and procedures described in your concept of operations. This includes but is not limited to a detailed description of all Information Based Indicia Program and Postal Service related operations, computer systems, and interfaces with both customers and the Postal Service that the vendor shall use in manufacturing, producing, distribution, customer support, product/device life cycle, inventory control, print readability quality assurance, and reporting on IBIP product/devices.

F. Product Submission/Testing

1. The vendor must submit, of each product/device requested for approval, a minimum of five combinations of each product/device to the Postal Service for evaluation and review. The vendor must provide directly, or through lease or rental, any equipment required for use in conjunction with the proposed product/device needed to represent usage conditions as proposed in the CONOPS (see section C).

2. The vendor must supply the Postal Service with sample mailpieces that represent the range of impression styles possible (including Ad plates) and envelop (size) types, envelop (paper) types, envelop colors, and envelop styles acceptable to the IBIP product/ device submitted for testing. Separate sample mailpieces from each printer driver supported by the IBIP product/ device will be required. Quantities of sample mailpieces required for testing will be determined by the Postal Service based on product/device characteristics.

3. The vendor must submit simultaneously to IBIP product/device submission to the Postal Service the identical IBIP product/device to a laboratory accredited under the National Voluntary Laboratory Accreditation Program (NVLAP) for product/device FIPS 140–1 certification, as applicable. Upon completion of this evaluation, the Postal Service requires the following be forwarded directly from the accredited laboratory to the Manager, Retail Systems & Equipment for review:

(a) A copy of letter of recommendation to the National Institute of Standards and Technology (NIST) of the United States of America.

(b) Copies of all proprietary and non-proprietary reports and recommendations generated.

(c) A copy of NIST issued certificate.

Additional Security Testing Note: The Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any IBIP product/ device submitted to the Postal Service for approval or approved by the Postal Service for manufacture and distribution.

G. Vendor Infrastructure Testing

1. Testing of all reporting requirements, including Postal Service/ customer licensing support, IBIP product/device status activity reporting, total IBIP product/device population inventory, irregularity reporting, lost and stolen reporting, financial transaction reporting, account

reconciliation, digital certificate acquisition, product initialization, cryptographic key changes, rate table changes, print quality assurance, device authorization, device audit, product audit, and remote inspections must be achieved by vendors prior to any product/device approval for distribution.

2. Testing of these activities and functions includes computer based testing of all interfaces with the Postal Service including but not limited to the following:

a. Product Manufacture and Life Cycle (including leased, unleased, new meter stock, installation, withdrawal, replacement, key management, lost, stolen, and irregularity reporting)
b. Product Distribution and Initialization (including device authorization, product initialization, customer authorization, and product maintenance)
c. Licensing (including license application, license update and license revocation)
d. Finance (including lock box account management, individual product financial accounting, refunds, daily summary reports, daily transaction reporting, and monthly summary reports)
e. Audits and Inspections

3. The vendor must complete an IBIP Product/Device—Vendor Infrastructure—Financial Institution—USPS Infrastructure (ALPHA) Test involving all entities in the proposed architecture; at a minimum this includes the proposed IBIP product/device, Vendor Infrastructure, financial institution and USPS Infrastructure systems and interfaces. ALPHA testing is intended to demonstrate the proposed IBIP product/devices' utility, functionality and compatibility with other systems, and may be conducted in a laboratory environment.

Vendor Infrastructure Testing—(ALPHA) Test Note: The Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any Vendor Infrastructure system supporting an IBIP product/device approved by the Postal Service for manufacture and distribution. Initial Vendor Infrastructure testing and (ALPHA) testing schedules will be supported at the convenience of the Postal Service. In addition, as all IBIP products/devices will have to conform to the Product/Infrastructure specs, vendors are also strongly encouraged to initiate dialogue regarding systems specifications with the Postal Service at the earliest possible date.

H. Field Test (BETA) Approval (Limited Distribution)

1. The vendor will submit a proposed Field Test (BETA) Test Plan identifying test parameters, product/device quantities, geographic location, test participants, test duration, test milestones, and product recall plan (if needed). The purpose of the BETA test is to demonstrate the proposed IBIP product/devices' utility, functionality and compatibility with other systems in a real-world environment. The BETA test will employ available communications and interface with current operational systems to conduct all IBIP functions. The Manager, Retail Systems & Equipment will determine acceptance of vendor proposed BETA Test Plans based on, but not limited to, assessed risk of product/device, product/device impact on Postal Service operations, and requirements for Postal Service resources.

2. The vendor has a duty to report security weaknesses to the Postal Service to ensure that each product/device model and every product/device in service protects the Postal Service against loss of revenue at all times. A grant of Field Test Approval (FTA) does not constitute an irrevocable determination that the Postal Service is satisfied with the revenue-protection capabilities of the product/device. After approval is granted to manufacture and distribute a product/device, no change affecting the basic features or safeguards of a product/device may be made except as authorized or ordered by the Postal Service in writing from the Manager, Retail Systems & Equipment.

1. Vendor/Product Approval (Full Distribution)

1. Upon receipt of the final certificate of evaluation from the national laboratory, and after obtaining positive results of internal testing of the product/device, successful completion of vendor infrastructure testing, ALPHA testing, and demonstration of limited distribution activities (BETA testing), the submitted product/device, vendor infrastructure and vendor/manufacturer qualification requirements will be administratively reviewed for final approval. Note: Copies of Draft 39 Code of Federal Regulation Part 502 containing IBIP Vendor/Manufacturer qualification requirements are available by contacting Terry Goss at (202) 268–3757.

2. The Postal Service may require at any time, that models/versions of approved products/devices, and the design and use manuals and specifications applicable to such product/devices and any revisions thereof be deposited with the Postal Service.

It is emphasized that this proposed procedure is being published for comments and is subject to final definition. Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553b(c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the proposed procedures.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–256 Filed 1–6–97; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Biovail Corporation International, Common Stock, $0.01 Par Value) File No. 1–11145

December 31, 1996.

Biovail Corporation International (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''AMEX'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, it has complied with Rule 18 of the AMEX by filing with the AMEX a certified copy of preambles and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its security from listing on the Amex and by setting forth in detail the reasons for such proposed withdrawal, and the facts in support thereof. The Security of the Company has been listed for trading on the New York Stock Exchange, Inc. (''NYSE'') effective December 11, 1996. In making the decision to withdraw the Security from listing on the AMEX, the Company considered the increase visibility of the Company's shares from being listed on the NYSE and the wishes of institutional shareholders.

Any interested person may, on or before January 22, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application

has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–240 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22425; International Series Release No. 1041; 812–10184]

Canadian Imperial Holdings Inc.; Notice of Application

December 31, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Canadian Imperial Holdings Inc.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would exempt applicant from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant requests an order that would permit it to sell certain debt securities and use the proceeds to finance the business activities of its parent company, Canadian Imperial Bank of Commerce (''CIBC''), and certain companies controlled by CIBC.

FILING DATE: The applicant was filed on June 6, 1996 and was amended on December 20, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 27, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 425 Lexington Avenue, 9th Floor, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Sarah A. Buescher, Staff Attorney, at (202) 942-0573, or Alison E. Baur, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Delaware corporation formed in December, 1981. All of applicant's outstanding voting securities are owned by CIBC. CIBC, a diversified financial institution governed by the Bank Act (Canada), provides, directly and through its subsidiaries, a broad range of personal, commercial, investment, and corporate banking services for its customers throughout the world. CIBC Inc. (''CI'') is a wholly-owned subsidiary of applicant that engages in the business of making loans primarily to commercial and industrial companies, real estate related loans and lease activities, and loans to depository institutions and foreign governments. CIBC Leasing Inc., also a wholly-owned subsidiary of applicant, engages in commercial leasing activities, primarily equipment leases to manufacturing companies.

2. In addition to owning CI and CIBC Leasing Inc., applicant acts as a holding company for CIBC's United States subsidiaries (''U.S. Subsidiaries''). Applicant also engages in financing activities and provides funds for CIBC, CI, CIBC Leasing Inc., and the U.S. Subsidiaries (collectively, the ''CIBC Entities''). Applicant proposes to obtain funds through the offer and sale of its debt securities in the United States and in overseas markets, and to lend the proceeds to the CIBC Entities.

3. Due to the nature of the debt markets, applicant may borrow in amounts exceeding the amounts required by the CIBC Entities at any given time. However, at least 85% of the cash or cash equivalents raised by applicant through the sale of debt securities will be loaned to the CIBC Entities as soon as practicable, but in no event later than six months after applicant's receipt of such cash or cash equivalents. Amounts that are not loaned to the CIBC Entities will be invested in government securities, securities of CIBC, CI or a company controlled by CIBC (or, in the case of a partnership or joint venture, the securities of the partners or participants in the joint venture), debt securities (including repurchase agreements) which are exempted from the provisions of the Securities Act of 1933 (the ''Securities Act'') by section 3(a)(3) of the Securities Act, or equity securities of unaffiliated companies in an amount that does not exceed 4% of applicant's assets.

4. Any issuance of debt securities by applicant will be guaranteed unconditionally by CIBC as to the payment of principal, interest, and premium on the securities, if any (the ''Guarantee''), in accordance with rule 3a–5(a)(1). The Guarantee will provide each holder of applicant's debt securities a direct right of action against CIBC to enforce CIBC's obligations under the Guarantee without first proceeding against applicant.

Applicant's Legal Analysis

1. Applicant requests relief under section 6(c) of the Act for an exemption from all provisions of the Act. The Commission has determined that it is appropriate to exempt a finance subsidiary from all provisions of the Act where the primary purpose of the finance subsidiary is to finance the business operations of its parent or other subsidiaries controlled by its parent and where any purchaser of the finance subsidiary's securities ultimately looks to the parent for repayment and not to the finance subsidiary.[1]

2. Rule 3a–5(b)(3)(i) in relevant part defines a ''company controlled by the parent company'' to be a corporation, partnership, or joint venture that is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules and regulations under section 3(a). Certain of the CIBC Entities do not fit within the technical definition of ''companies controlled by the parent company'' because they derive their non-investment company status from section 3(c) of the Act.

3. In the release adopting rule 3a–5, the Commission stated that it may be appropriate to grant exemptive relief to the finance subsidiary of a section 3(c) issuer, but only on a case-by-case basis upon an examination of all relevant

[1] Investment Company Act Release No. 14275 (Dec. 14, 1984) (release adopting rule 3a–5 under the Act). Rule 3a–5 provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

facts. According to the adopting release, the concern was that a company may be considered a non-investment company for the purposes of the Act under section 3(c) and still be engaged primarily in investment company activities. Applicant states that none of the CIBC Entities to which applicant may loan money are engaged primarily in investment company activities. In addition, if CIBC issued the securities that are to be issued by applicant and use the proceeds, none of the CIBC Entities would be subject to regulation under the Act. While CIBC has chosen instead to use applicant as a financing vehicle, the Guarantee ensures that holders of applicant's securities will have direct access to CIBC's credit.

4. Under rule 3a–5(a)(6), a finance subsidiary may only invest in government securities, securities of its parent company or a company controlled by its parent company, or debt securities exempt under section 3(a)(3) of the Securities Act. Applicant intends to invest in equity securities of unaffiliated companies in an amount that does not exceed 4% of its assets. Applicant will hold such securities due to non-U.S. tax constraints applicable to CIBC. Applicant's primary purpose, however, will continue to be the financing of the business operations of CIBC and companies controlled by CIBC. In addition, purchasers of applicant's debt securities will receive disclosure documents that make clear that such purchasers should ultimately look to CIBC for repayment pursuant to CIBC's guarantee. Thus, applicant asserts that, because neither its structure nor its mode of operation will resemble that of an investment company, the holders of applicant's securities will not rely on applicant's management of securities issued by unaffiliated companies.

5. Section 6(c) provides, in relevant part, that the SEC may, conditionally or unconditionally, by order, exempt any person or class of persons from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. Applicant submits that the relief requested satisfies the section 6(c) standard.

Applicant's Condition

Applicant agrees that any order issued on this application shall be subject to the following condition:

Applicant will comply with all of the provisions of rule 3a–5 under the Act, except: (a) applicant will be permitted to invest in or make loans to corporations, partnerships, and joint ventures that do not meet the portion of the definition of ''company controlled by the parent company'' in rule 3a–5(b)(3)(i) solely because they are excluded from the definition of investment company by section 3(c) (1), (3), (4), (6), or (7), *provided* that any such entity excluded from the definition of investment company pursuant to section 3(c)(1) will only engage in lending, leasing or related activities (such as entering into credit derivatives to manage that credit risk exposures of its lending and leasing activities) and will not be structured solely as a means of avoiding regulation under the Act, and *provided further*, that any such entity excluded from the definition of investment company pursuant to section 3(c)(6) of the Act will not be engaged primarily, directly or indirectly, in one or more of the businesses described in section 3(c)(5) of the Act; and (b) applicant will be permitted to invest in, reinvest in, own, hold, or trade in equity securities of unaffiliated companies with a purchase price not in excess of $200 million (or any higher amount not in excess of 4% of applicant's assets).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–239 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22421; 811–7069]

Senior High Income Portfolio II, Inc.; Notice of Application

December 30, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Senior High Income Portfolio II, Inc.

RELEVANT ACT SECTION: Order requested under section 8(f) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 8, 1996 and amended on December 13, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 24, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end, non-diversified management investment company organized as a Maryland corporation. On July 19, 1993, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–2 under the Act and the Securities Act of 1933. The registration statement became effective on September 17, 1993, and applicant commenced the initial public offering the same day.

2. On December 6, 1995, applicant's board of directors approved an Agreement and Plan of Merger (the ''Plan'') whereby applicant would transfer its assets to Senior High Income Portfolio, Inc. (''SHIP I''), a registered closed-end management investment company, in exchange for shares of SHIP I. Pursuant to rule 17a–8 under the Act,[1] applicant's board of directors determined that the proposed reorganization was in the best interest of applicant and that the interests of the existing shareholders would not be

[1] Rule 17a–8 provides an exemption from section 17(a) of the Act for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

diluted as a result of the proposed reorganization.

3. In approving the Plan, the directors identified certain benefits which were likely to result from the reorganization. It was anticipated that the applicant's shareholders would remain invested in a closed-end fund with investment objectives and policies virtually identical to those of applicant, and applicant's shareholders would also benefit from a reduced overall operating expense ratio based on the combined assets of the surviving fund and from greater efficiency and flexibility in portfolio management.

4. On December 29, 1995, applicant filed a proxy statement with the SEC that was declared effective on February 5, 1996 and distributed to shareholders on or about February 5, 1996. In addition to solicitation by mail, certain agents of applicant solicited shareholder proxies by telephone. Applicant's shareholders approved the Plan at a special meeting held on March 14, 1996.

5. Pursuant to the Plan, on April 15, 1996, applicant transferred all of its assets and liabilities to SHIP I. Upon transfer, each share of applicant's common stock converted into the right to receive an equivalent dollar amount (to the nearest one ten-thousandth of one cent) of full shares of SHIP I common stock plus cash in lieu of any fractional shares, computed based on the net asset value per share of each of applicant and SHIP I.

6. Expenses incurred in connection with the reorganization included proxy solicitation expenses, filing fees, legal and audit fees and printing and stock exchange fees. All expenses applicant incurred in connection with the reorganization were paid by SHIP I after the reorganization.

7. As of the date of the application, applicant had no shareholders and no securities outstanding, and has no debts or other liabilities outstanding. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged, nor proposes to engage, in any business activities other than those necessary for the winding up on its affairs.

9. Applicant filed articles of merger with the State of Maryland on April 12, 1996, which became effective on April 15, 1996.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–243 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22422; 811–7131]

Senior Strategic Income Fund, Inc.; Notice of Application

December 30, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Senior Strategic Income Fund, Inc.

RELEVANT ACT SECTION: Order requested under section 8(f) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 8, 1996 and amended on December 13, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 27, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end, non-diversified management investment company organized as a Maryland corporation. On July 19, 1993, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act and a registration statement on Form N–2 under the Act and the Securities Act of 1933. The registration statement became effective on September 17, 1993, and applicant commenced the initial public offering the same day.

2. On December 6, 1995, applicant's board of directors approved an Agreement and Plan of Merger (the ''Plan'') whereby applicant would transfer its assets to Senior High Income Portfolio, Inc. (''SHIP I''), a registered closed-end management investment company, in exchange for shares of SHIP I. Pursuant to rule 17a–8 under the Act,[1] applicant's board of directors determined that the proposed reorganization was in the best interest of applicant and that the interests of the existing shareholders would not be diluted as a result of the proposed reorganization.

3. In approving the Plan, the directors identified certain benefits which were likely to result from the reorganization. It was anticipated that the applicant's shareholders would remain invested in a closed-end fund with investment objectives and policies virtually identical to those of applicant, and applicant's shareholders would also benefit from a reduced overall operating expense ratio based on the combined assets of the surviving fund and from greater efficiency and flexibility in portfolio management.

4. On December 29, 1995, applicant filed a proxy statement with the SEC that was declared effective on February 5, 1996 and distributed to shareholders on or about February 5, 1996. In addition to solicitation by mail, certain agents of applicant solicited shareholder proxies by telephone. Applicant's shareholders approved the Plan at a special meeting held on March 14, 1996.

5. Pursuant to the Plan, on April 15, 1996, applicant transferred all of its assets and liabilities to SHIP I. Upon transfer, each share of applicant's common stock converted into the right to receive an equivalent dollar amount (to the nearest one ten-thousandth of one cent) of full shares of SHIP I common stock plus cash in lieu of any fractional shares, computed based on the net asset value per share of each of applicant and SHIP I.

6. Expenses incurred in connection with the reorganization included proxy solicitation expenses, filing fees, legal and audit fees and printing and stock exchange fees. All expenses applicant

[1] Rule 17a–8 provides an exemption from section 17(a) of the Act for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

incurred in connection with the reorganization were paid by SHIP I after the reorganization.

7. As of the date of the application, applicant had no shareholders and no securities outstanding, and has no debts or other liabilities outstanding. Applicant is not a party to any litigation or administrative hearing. Applicant is neither engaged, nor proposes to engage, in any business activities other than those necessary for the winding up of its affairs.

8. Applicant filed articles of merger with the State of Maryland on April 12, 1996, which became effective on April 15, 1996.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–242 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 6, 1997.

A closed meeting will be held on Wednesday, January 8, 1997, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, January 8, 1997, at 10:00 a.m., will be:

Injunction and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: January 3, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–441 Filed 1–3–97; 3:53 pm]

BILLING CODE 8010–01–M

[Release No. 34–38098; File No. SR–CHX–96–26]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to Proposed Rule Change Relating to Enhanced SuperMAX and Timed Enhanced SuperMAX

December 30, 1996.

I. Information

On October 9, 1996, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal relating to its SuperMAX system, seeking permanent approval of the existing pilot program. The proposed rule change was published for comment in the Federal Register on November 20, 1996.[3] The CHX filed an amendment (''Amendment No. 2'') to the proposal on December 30, 1996.[4] No comments were received on the proposed rule change. This order approves the Exchange's proposal as amended.

II. Description of the Proposal

On May 22, 1995, the Commission approved a proposed rule change of the CHX that allows specialists on the Exchange, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.[5] That approval order contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options available under this new rule.

On July 27, 1995, the Commission approved a proposed rule change of the CHX that implemented two options available under this new rule.[6] These two new options, Enhanced SuperMAX and Timed Enhanced SuperMAX, were approved on a pilot basis until July 31, 1996. The Commission extended the pilot program until December 31, 1996 and requested that the CHX provide a report to the Commission, by August 31, 1996,[7] describing its experience with the pilot program. On August 30, 1996, the CHX submitted a report.

The Exchange, based on its amended proposal, has requested a further extension for its Enhanced SuperMAX and Timed Enhanced SuperMAX pilot program[8] through March 1, 1997. As stated above, the two options available in the pilot program are Enhanced SuperMAX and Timed Enhanced SuperMAX. Enhanced SuperMAX is merely a reactivation of the Exchange's Enhanced SuperMAX program, a program originally approved by the Commission on a pilot basis in 1991.[9] The proposed Enhanced SuperMAX program differs from the original pilot program approved in 1991 in that it is available starting at 8:45 a.m. instead of 9:00 a.m. This program also differs from the Exchange's SuperMAX program in that under this program, certain orders are ''stopped'' at the consolidated best bid or offer and are executed with reference to the *next* primary market sale instead of the previous primary market sale. Timed Enhanced SuperMAX is a slight variation on the Enhanced SuperMAX program. It executes orders in the same manner as the Enhanced SuperMAX program except that if there are no executions in the primary market after the order has been stopped for a designated time period, the order is executed at the stopped price at the end of such period. Such period, known as a time out period, is pre-selected by a specialist on a stock-by-stock basis based on the size of the order, may be changed by a specialist no more frequently than once

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 37947 (November 13, 1996), 61 FR 59124. In Amendment No. 1 to the proposed rule change, submitted on November 8, 1996, the Exchange replaced the text of the proposed rule change originally filed with rule text changed to reflect previously inadvertently omitted language. *See* Securities Exchange Act Release No. 37947 at note 2.

[4] Letter from David T. Rusoff, Esq., Foley & Lardner, to Janet W. Russell-Hunter, Special Counsel, Office of Market Supervision, Division of Market Regulation, SEC, dated December 23, 1996. In Amendment No. 2, the CHX amended the proposed rule change to request an extension of the pilot through March 1, 1997, rather than a request for permanent approval of the program, and agreed to submit additional data regarding the pilot by January 31, 1997.

[5] *See* Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007.

[6] *See* Securities Exchange Act Release No. 36027 (July 27, 1995), 60 FR 39465.

[7] *See* Securities Exchange Act Release No. 37491 (July 29, 1996), 61 FR 40690.

[8] CHX Rule 37 (e)–(f).

[9] *See* Securities Exchange Act Release No. 30058 (December 10, 1991), 56 FR 65765.

a month, and may be no less than 30 seconds.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act, in that the proposal is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Commission continues to believe that the pricing and execution procedures of Enhanced SuperMAX and Timed Enhanced SuperMAX are consistent with the maintenance of fair and orderly auction markets on national securities exchanges.The Commission asked the Exchange to monitor the operation of the systems and determine their effectiveness and to submit a report to the Commission describing its experience with the pilot program.[10] While the Exchange submitted a report on August 30, 1996, the Commission has requested and the Exchange has agreed to submit, by January 31, 1997, certain supplemental data regarding the pilot program.

The Commission believes that this additional data and conclusions reached therefrom will be critical in determining whether to further extend or permanently approve the program. Moreover, extending the effectiveness of the pilot program until March 1, 1997 will give the Commission an opportunity to carefully and comprehensively evaluate the information provided by the Exchange. Accordingly, the Commission believes it is reasonable to extend the Enhanced SuperMAX and Timed Enhanced SuperMAX pilot program until March 1, 1997, and to request that the Exchange submit additional data to the Commission by January 31, 1997.

Any requests to modify this pilot program, extend its effectiveness, or to seek permanent approval for the pilot program should be submitted to the Commission by January 31, 1997 as a proposed rule change pursuant to Section 19(b) of the Act.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. Amendment No. 2 requests that rather than being approved on a permanent basis, that the Enhanced SuperMAX and Timed Enhanced SuperMAX features of the SuperMAX system be approved through March 1, 1997, which will permit the pilot program to remain in effect without interruption. In addition, the Exchange has represented that no problems have arisen and no complaints have been received concerning the pilot program since its implementation.[11] Accordingly, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act, to approve Amendment No. 2 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submission should refer to File No. SR–CHX–96–26 and should be submitted by January 28, 1997.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CHX–96–26), as amended, is approved, and accordingly, that the pilot program is extended until March 1, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–237 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

[10] *See* Securities Exchange Act Release No. 36027, *supra* note 6.

[11] Telephone conversation between David T. Rusoff, Esq. Foley & Lardner, and Janet Russell-Hunter, Special Counsel, Office of Market Supervision, Division of Market Regulation, SEC, on December 23, 1996.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.20–3(a)(12).

[Release No. 34–38097; File No. SR–NASD–96–45]

Self-Regulatory Organizations; Notice and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Small Order Execution System Tier Size Classifications

December 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 18, 1996, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is submitting this filing to effectuate The Nasdaq Stock Market, Inc.'s (''Nasdaq'') periodic reclassification of Nasdaq Market (''NNM'') securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through Nasdaq's Small Order Execution System (''SOES'') and the minimum quote size requirements for Nasdaq market makers in NNM securities. Specifically, under the proposal, 762 NNM securities will be reclassified into a different SOES tier size effective January 2, 1997. Since the NASD's proposal is an interpretation of existing NASD rules, there are no language changes.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change is to effectuate Nasdaq's periodic reclassification of NNM securities into appropriate tier sizes for purposes of determining the maximum size order for a particular security eligible for execution through SOES and the minimum quote size requirements for Nasdaq market in NNM securities. Nasdaq periodically reviews the SOES tier size applicable to each NNM security to determine if the trading characteristics of the issue have changed so as to warrant a tier size adjustment. Such a review was conducted using data as of September 30, 1996, pursuant to the following established criteria: [1]

NNM securities with an average daily non-block volume of 3,000 shares or more a day, a bid price less than or equal to $100, and three or more market makers are subject to a minimum quotation size requirement of 1,000 shares and a maximum SOES order size of 1,000 shares;

NNM securities with an average daily non-block volume of 1,000 shares or more a day, a bid price less than or equal to $150, and two or more market makers are subject to a minimum quotation size requirement of 500 shares and a maximum SOES order size of 500 shares; and

NNM securities with an average daily non-block volume of less than 1,000 shares a day, a bid price less than or equal to $250, and less than two market makers are subject to a minimum quotation size requirement of 200 shares and a maximum SOES order size of 200 shares.

Pursuant to the application of this classification criteria, 762 NNM securities will be reclassified effective January 2, 1997. These 762 NNM securities are set out in the NASD's *Notice To Members 96–88* (December, 1996).

In ranking NNM securities pursuant to the established classification criteria, Nasdaq followed the changes dictated by the criteria with three exceptions. First an issue was not moved more than one tier size level. For example, if an issue was previously categorized in the 1,000-share tier size, it would not be permitted to move to the 200-share tier even if the reclassification criteria showed that such a move was warranted. In adopting this policy, Nasdaq was attempting to maintain adequate public investor access to the market for issues in which the tier size level decreased and help ensure the ongoing participation of market makers in SOES for issues in which the tier size level increased. Second, for securities priced below $1 where the reranking called for a reduction in tier size, the tier size was not reduced. Third, for the top 50 Nasdaq securities based on market capitalization, the SOES tier sizes were not reduced regardless of whether the reranking called for a tier-size reduction.

The NASD believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires, among other things, that the rules of the NASD governing the operation of The Nasdaq Stock Market be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. The NASD believes that the reassignment of NNM securities within SOES tier size levels and minimum quotation size levels will further these ends by providing an efficient mechanism for small, retail investors to execute their orders on Nasdaq and by providing investors with the assurance that they can effect trades up to a certain size at the best prices quoted on Nasdaq.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective immediately pursuant to Section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4 because the reranking of NNM securities into appropriate SOES tier sizes was done pursuant to the NASD's stated policy and practice with respect to the administration and enforcement of two existing NASD rules. Further, in the SOES Tier Size Order, the Commission requested that the NASD provide this information as an interpretation of an existing NASD rule under Section 19(b)(3)(A) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–96–45 and should be submitted by January 28, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–236 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

[1] The classification criteria are set forth in NASD Rule 4613(a)(2) and the footnote to NASD Rule 4710(g).

[2] 17 CFR 200.30–3(a)(12).

[Release No. 34–38101; File No. SR–NASD–96–58]

Self-Regulatory Organizations; Notice and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Interim Extension of the OTC Bulletin Board ® Service through March 31, 1997

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 27, 1996, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the NASD, through a subsidiary corporation, initiated operation of the OTC Bulletin Board Service (''OTCBB Service'' or ''Service'') in accord with the Commission's approval of File No. SR–NASD–88–19, as amended.[1] The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are neither listed on The Nasdaq Stock Market℠ nor on a registered national securities exchange (collectively referred to as ''OTC Equities'').[2]

Essentially, the Service supports NASD members' market making in OTC Equities through authorized Nasdaq Workstation II™ authorized devices. Real-time access to quotation information captured in the Service is available to subscribers of Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now carry OTCBB Service data. The Service is currently operating under an interim approval that expires on December 31, 1996.[3]

The NASD hereby files this proposed rule change, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, to obtain authorization for an interim extension of the Service through March 31, 1997. During this interval, there will be no material change in the OTCBB Service's operational features, absent Commission approval of a corresponding Rule 19b–4 filing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR–NASD–92–7) that requested permanent approval of the Service.[4] For the month ending November, 1996, the Service reflected the market making positions of 411 NASD member firms displaying quotations/indications of interest in approximately 5,700 OTC Equities.

During the proposed extension, unregistered foreign securities and American Depositary Receipts (collectively, ''Foreign Equity Securities'') will remain subject to the twice-daily, update limitation that traces back to the Commission's original approval of the OTCBB Service's operation. As a result, all priced bids/offers displayed in the Service for unregistered Foreign Equity Securities will remain indicative.

In conjunction with the launch of the Service in 1990, the NASD implemented a filing requirement (currently under NASD Rule 6740) and review procedures to verify member firms' compliance with Rule 15c2–11 under the Act. During the proposed extension, this review process will continue to be an important component of the NASD's self-regulatory oversight of broker-dealers' market making in OTC Equities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service, including those related to the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (''Reform Act'') particularly Section 17B of the Act.[5] The NASD notes that implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for ''penny stocks.''

2. Statutory Basis

The NASD believes that this proposed rule change is consistent with Sections 11A(a)(1), 15A(b)(6) and (11), and Section 17B of the Act. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, among other things, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, Section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

The NASD believes that extension of the Service through March 31, 1997 is fully consistent with the foregoing provisions of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for

[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 19124.

[2] With the Commission's approval of File No. SR–NASD–93–24, the universe of securities eligible for quotation in the OTCBB now includes certain equities listed on regional stock exchanges that do not quality for dissemination of transaction reports via the facilities of the Consolidated Tape Association.

[3] Securities Exchange Act Release No. 37387 (June 28, 1996), 61 FR 36098.

[4] Securities Exchange Act Release No. 30766 (June 1, 1992), 57 FR 24281. *See also* Securities Exchange Act Release No. 34956 (November 9, 1994), 59 FR 59808 providing notice of Amendment No. 1 to the proposed rule change.

[5] On November 24, 1992, the NASD filed an application with the Commission for interim designation of the Service as an automated quotation system for penny stocks, pursuant to Section 17B(b) of the Act. On December 30, 1992, the Commission granted Qualifying Electronic Quotation System (''QEQS'') status for the Service for purposes of certain penny stock rules that became effective on January 1, 1993. On August 26, 1993, the Commission granted the NASD's request for an extension of QEQS status until such time as the OTCBB meets the statutory requirements of Section 17B(b)(2).

approving the proposed rule change prior to the 30th day after its publication in the Federal Register to avoid any interruption of the Service. The current authorization for the Service extends through December 31, 1996. Hence, it is imperative that the Commission approve the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the Service pending Commission action on the proposed extension.

The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as requested in File No. SR–NASD–92–7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market-making in approximately 5,700 OTC Equities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From a regulatory standpoint, the NASD's capture of quotation data from participating market makers supplements the transactional data now reported by member firms pursuant to NASD Rule 6600.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–58 and should be submitted by January 28, 1997.

V. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that approval of the proposed rule change is consistent with the Act and the rules and regulations thereunder, and in particular with the requirements of Section 15A(b)(11) of the Act, which provides that the rule of the NASD relating to quotations must be designed to produce fair and informative quotations, prevent fictitious or misleading quotations and promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice. The Commission finds that approval of this proposed rule change to continue operation of the pilot program is appropriate. The Commission has solicited and continues to solicit comments from the OTCBB Service. An extension of the pilot program will provide the Commission with sufficient time to consider the issues raised by the various interested parties.

Accelerated approval of the NASD's proposal is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD members' market making in OTC Equities and that facilitates price discovery and the execution of customers' orders at the best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of trading in OTC Equities that are quoted in the Service, including certain non-Tape B securities that are listed on regional exchanges and quoted in the Service.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an interim period through March 31, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–238 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–38095; File No. SR–NYSE–96–39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Extending the Current $400,000 Limit on Transaction Charges through 1997

December 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 18, 1996, the New York Stock Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In January 1996, the NYSE implemented a rate revision to its equity transaction charges. The revision included the elimination of all systems credits, a reduction of charges for shares 5,000 and under, the elimination of charges for non-market-maker system orders from 100 to 2,099 shares, the elimination of the growth limitation of 4% over 1988 levels, and the implementation of a monthly $400,000 transaction charge cap per firm, a limitation which would be indexed annually to average daily volume, and would be removed January 1, 1999.[1] The proposed revision for the 1997 transaction charge extends the current $400,000 cap rather than raising the cap based on the increase in volume from 1995 to 1996.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the

[1] Securities Exchange Act Release No. 36465 (November 8, 1995), 60 FR 57473 (November 15, 1995).

most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the change is to respond to the needs of our constituents with respect to overall competitive market conditions and customer satisfaction.

(2) Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(4) that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed fee change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NYSE–96–39 and should be submitted by January 28, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–234 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38103; File No. SR–OCC–96–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to Membership Standards

December 31, 1996.

On August 30, 1996, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–OCC–96–11) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the Federal Register on October 11, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The proposed rule change amends OCC's by-laws and rules regarding OCC's initial membership standards and the ongoing duties of clearing members as follows.

A. Article V, Section 1 of the By-Laws

Clause d. has been added to Interpretation .02 of the Interpretations and Policies (''Interpretations'') under Article V, Section 1 of OCC's by-laws. Clause d. provides that the Membership/Margin Committee (''Committee'') of the Board of Directors (''Board'') will not recommend approval of an application for clearing membership unless the applicant's Designated Examining Authority (''DEA'') has stated that it has no objections to the application for clearing membership.[3] Pursuant to that clause, the Committee, if requested in writing by the applicant, is permitted to waive the requirement in exceptional cases and where good cause is shown.

Interpretation .03 is amended to require that if an applicant elects to use an associated person[4] to satisfy the applicable requirements of clause a. through c. thereof, the designated associated person must be a full time employee of the applicant.[5] Interpretation .03 also is amended to require that the key operations employees required to have attended applicable OCC operations readiness review sessions and successfully completed any applicable OCC operational and financial examinations for operations employees be full time employees and attend all such review sessions. Interpretation .04 is amended to eliminate the ability of an applicant for clearing membership to enter into a facilities management arrangement with a non-clearing member.[6]

Interpretation .05 is added to authorize the Committee to recommend to the Board that additional financial requirements be imposed on an applicant for clearing membership (*e.g.*, an increase in net capital or a requirement to make and maintain

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 37792 (October 7, 1996), 61 FR 53475.

[3] Under OCC's current membership review procedures, an applicant's DEA is contacted for information regarding the applicant and is requested to provide advice or any objections with respect to the applicant's ability to self-clear option transactions.

[4] Associated person is defined in Interpretation .03 as any partner, officer, director, or branch manager of such applicant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such applicant, or any employee of such applicant.

[5] Clauses a. through c. require that: an applicant that is a registered broker-dealer must be registered as a ''Limited Principal—Financial Operations'' with the National Association of Securities Dealers; an applicant that is applying for clearing membership as an exempt Canadian clearing member must be registered as a principal/director/officer and as a designated registered options principal with the Investment Dealers Association of Canada; and an applicant that is a non-U.S. securities firm must have completed any applicable OCC financial and operational examination for employees who are responsible for supervising the preparation of applicant's financial reports.

[6] Currently, OCC has two clearing members that use the same non-clearing member facilities manager.

initial margin deposits) or that restrictions be imposed on the applicant's clearance of option transactions if the Committee has determined that the applicant's financial or operational condition in relation to the business that the applicant has proposed to transact through OCC makes such action necessary or advisable for the protection of OCC, clearing members, or the general public. The Board is required to review independently such a recommendation to determine whether it should be imposed on an applicant. Any requirements or restrictions so imposed would remain in force for the period determined by the Board but will last no longer than the end of the first three calendar months commencing after the applicant's admission to clearing membership. Furthermore, Interpretation .05 states that the imposition of any additional requirements or restrictions so imposed shall not preclude OCC from imposing contemporaneous requirements or restrictions pursuant to other provisions of OCC's by-laws and rules.[7]

B. Article V, Section 3 of the By-Laws

Interpretation .01 has been added to Section 3 of Article V. That interpretation requires an applicant approved for clearing membership subject to the satisfaction of specified conditions to meet those specified conditions within six months from the date on which its application is approved unless the Board prescribes a shorter time period at the time of approval. If an applicant fails to meet the specified conditions within the applicable time period, the approval of the application will be deemed withdrawn, and the application will be deemed to have lapsed unless the period to satisfy those conditions is extended by OCC. Any applicant seeking an extension will be required to make a written request specifying any material changes that have occurred in its ability to transact business with OCC. The Chairman or the President is vested with the authority to approve or disapprove an extension request. No deadline can be extended beyond one year from the date the application originally was approved.

C. Chapter II of the Rules

Rule 201 is amended (i) to delete the requirement that each clearing member maintain an office in the vicinity of the office of OCC and (ii) to require every clearing member to provide OCC with prompt written notice of the relocation of its principal office or the office maintained by the clearing member to comply with the requirements of Rule 201(a) and with respect to a non-U.S. clearing member, prompt notice of a material change in the office arrangements OCC had previously found satisfactory.

Rule 214(a) is amended to require that only associated persons who are full time employees of a clearing member may satisfy the applicable requirements of that rule.[8] Interpretation .02 thereunder is amended (i) to shorten the time period from one year to three months within which a clearing member must replace an associated person through whom a clearing member has been meeting the requirements of the rule and (ii) to require prompt, written notice of any separation between the clearing member and such associated person.

Rule 215 has been added to require each clearing member to provide OCC with prompt, prior, written notice of material changes to its operations including: (i) its involvement in any merger, combination, or consolidation; (ii) the acquisition of another entity; (iii) the sale of a significant portion of its assets; (iv) a change in its form of business organization or the name under which it does business; and (v) a change in the direct or indirect beneficial ownership of 10% or more of the equity of the clearing member. Clearing members will be required to provide OCC with such documents as OCC might require with respect to such events as well as a list of persons or entities that are the beneficial owners directly or indirectly of 10% or more of the equity of the clearing member.

II. Discussion

Section 17A(b)(3)(F)[9] of the Act requires that the rules of a clearing agency be designed to safeguard securities and funds in its custody or control. The proposal should assist OCC in this regard by helping to ensure that only entities that meet certain standards are standards are admitted to OCC membership. For example, seeking the approval of an applicant's DEA prior to admission should help OCC to confirm that the admission is consistent with the applicant's current operations. Furthermore, by allowing the Committee to recommend that additional requirements or restrictions be placed on an applicant, OCC should be better able to monitor such applicant and evaluate the risks such applicant poses to OCC. Similarly, by requiring applicants to meet all conditions of membership within six months of admission, OCC limits the risk that such applicant poses to OCC while permitting an applicant a reasonable amount of time to comply with OCC rules.

Members are now required to provide OCC prompt notice of such events as a change in office or a material change in operations. By providing prompt notice of these changes, the proposal should enable OCC to better monitor the financial and operational status of its members. By admitting applicants subject to certain conditions and by monitoring members' conditions, OCC should be able to further reduce the risk of member default and thereby further reduce the risk that OCC may need to expend funds in satisfaction of a defaulting member's obligations. Thus, the proposal should assist OCC in safeguarding funds and securities.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–96–11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–231 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38105; File No. SR–OCC–96–13]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to Unit Investment Trusts as Margin Collateral

December 31, 1996.

On September 6, 1996, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–OCC–96–13) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the Federal Register

[7] *E.g.*, OCC Rule 305.

[8] Rule 214(a) contains provisions similar to Interpretation .03 of Article V, Section 1 of the by-laws, *supra* notes 4 and 5 and accompanying text.

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

on October 11, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The proposed rule change adds subparagraph (4) to Rule 604(d) to permit clearing members to deposit as margin with OCC publicly traded units of beneficial interest (''trust units'') in unit investment trusts that hold portfolios or baskets of common stocks. These classes of trust units are traded and cleared like shares of common stock and are typically held in book entry form at a securities depository. The trust units must met the requirements applicable to stocks under Rule 604(d). Rule 604(d) requires that to be eligible as margin deposits, stock must have a market value greater than $10 per share and must either (a) be traded on a national securities exchange and have last sale reports collected and disseminated pursuant to a consolidated transaction reporting plan or (b) be traded in the over-the-counter market and designated as a national market system security pursuant to the Commission's Rule 11Aa2–1.[3] Pursuant to Rule 604(d)(1), trust units will be valued on a daily basis at 60% of currently market value.

In order to be eligible for deposit, the trust units must be of a class approved by OCC's Membership/Margin Committee (''Committee'') for deposit as margin. At the present time, the Committee has approved Standard & Poor's (''S&P'') depository receipts on the S&P 500 Index and S&P MidCap 400 Index as being classes approved for deposit as margin.

In addition, the proposed rule change replaces the term ''stocks'' with the term ''securities'' in subparagraphs (2) and (3) to Rule 604(d). Subparagraphs (2) and (3) of Rule 604(d) limit the use of customer securities as margin and prescribe the method of depositing margin securities. The amendment clarifies that such sections apply not only to stocks but also corporate bonds eligible as margin deposits under rule 604(d)(1).

II. Discussion

Section 17A(b)(3)(F)[4] of the Act requires that the rules of a clearing agency be designed to safeguard securities and funds in its custody or control. Because the trust units must be either traded on a national securities exchange or designated as a national market system security to be eligible as collateral, the proposal ensures that only very liquid securities will be accepted. Furthermore, by initially limiting eligibility to S&P depository receipts on the S&P 500 Index and the S&P MidCap 400 Index, OCC will be able to gain experience in accepting trust units before expanding the types of trust units it will accept. Therefore, the Commission believes that OCC's acceptance of these classes of trusts units is consistent with OCC's obligation to safeguard securities and funds.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–96–13) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–232 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

[2] Securities Exchange Act release No. 37793 (October 7, 1996), 61 FR 53477.

[3] 17 CFR 240.11Aa2–1.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

[Release No. 34–38099; File Nos. SR-Philadep–96–20 and SR–SCCP–96–09]

Self-Regulatory Organizations; Philadelphia Depository Trust Company and Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Permanent Approval on an Accelerated Basis of Proposed Rule Changes Concerning the Adoption of Article 8 of the New York Uniform Commercial Code to Govern Certain Transactions

December 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 15, 1996, the Philadelphia Depository Trust Company (''Philadep'') and the Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes (File Nos. SR-Philadep–96–20 and SR–SCCP–96–09) as described in Items I and II below, which Items have been prepared primarily by Philadep and SCCP. The Commission is publishing this notice and order to solicit comments from interested persons and to grant permanent approval of the proposed rule changes on an accelerated basis.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

Philadep and SCCP request permanent approval for their respective adoption of Article 8 of the State of New York's Uniform Commercial Code (''UCC'') to govern certain transactions involving Philadep, SCCP, their participants, and pledgees. On June 28, 1996, the Commission temporarily approved through December 31, 1996, Philadep's and SCCP's adoption of New York's U.C.C. Article 8.[2]

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, Philadep and SCCP included statements concerning the purpose of and the basis for the proposed rule changes and discussed any comments received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. Philadep and SCCP have prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organizations' Statements of the Purpose of, and the Statutory Basis for, the Proposed Rule Changes

Philadep and SCCP propose to permanently adopt Rule 32 and Rule 41, respectively, and to permanently amend Rule 1 of their rules. The proposed rule change codifies Philadep's and SCCP's decision to elect Article 8 of the New York UCC to govern certain transactions for the purpose of providing a uniform, consistent, and predictable body of law. Specifically, Rule 32 and Rule 41 will assure that the rights and obligations of Philadep and SCCP, their participants, and their pledgees with respect to transfers and pledges of securities, to the extent Article 8 of the UCC applies thereto, will be governed by and construed in accordance with Article 8 of the UCC of New York in effect from

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release Nos. 36781 (January 26, 1996), 61 FR 3958 [Files Nos. SR–SCCP–96–01 and SR–Philadep–96–01] and 37382 (June 28, 1996), 61 FR 35291 [File Nos. SR–Philadep–96–08 and SR–SCCP–96–04] (orders granting accelerated approval on a temporary basis of proposed rule changes to provide for the application of Article 8 of the New York UCC).

time to time. Rule 1 will define the term ''security'' by citing the definition of security in Article 8 of New York's UCC.

Philadep and SCCP note that uncertainty exists as to whether New York law or Pennsylvania law applies to particular transfers and as to whether some transfers within Philadep's or SCCP's systems may be governed by Pennsylvania's UCC Article 8 while other transaction within such systems may be governed by New York's UCC Article 8. With so many of the transactions for which Philadep and SCCP provide depository, clearance, and settlement services potentially being affected [*e.g.*, those transactions effected through interface with broker-dealers, banks, and other institutions which are participants in The Depository Trust Company (''DTC'') and National Securities Clearing Corporation (''NSCC'')], it is problematic that different rules of law under Article 8 of the UCC may govern the rights and obligations of parties to such transfers. Therefore, Philadep and SCCP have chosen to elect the application of New York's UCC Article 8 rather than Pennsylvania's UCC Article 8. The choice of New York law also assures that DTC, NSCC, and their respective participants and pledgees will find harmonious commercial code provisions governing their extensive dealings with Philadep and SCCP, their participants, and pledgees in this area as the New York based groups already are subject to New York law.

Philadep and SCCP state that they believe the proposed rule changes are consistent with Section 17A of the Act and the rules and regulations thereunder because the rules are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities, to remove impediments to and perfect the mechanism of a national market system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organizations' Statements on Burden on Competition

Philadep and SCCP do not believe that the proposed rule changes will impact or impose a burden on competition.

(C) Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Section 17A(b)(3)(F) of the Act [3] requires the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities. As stated in previous orders,[4] the Commission believes the proposed rule changes are consistent with this requirement because the adoption of Article 8 of the New York UCC should help provide certainty with respect to the substantive rights and obligations under UCC Article 8 that are applicable to Philadep and SCCP and their participants particularly with respect to transactions with broker-dealers, banks, and other institutions that are participants of other foreign or domestic clearing entities.

Philadep and SCCP have requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. Currently, the Canadian Depository for Securities (''CDS'') acts as a corresponding depository for Philadep and is a participant of SCCP so that transactions in certain Canadian and U.S. brokers-dealers can be cleared and settled through the facilities of Philadep and SCCP.[5] According the Philadep and SCCP, their arrangement with CDS is possible because Article 8 of New York's UCC, unlike Article 8 of Pennsylvania's UCC, provides for book-entry transfers of securities when the certificated security is in the custody of certain foreign clearing organizations. Therefore, to enable Philadep and SCCP to continue to provide without any disruption clearance, settlement, and depository services for certain securities transactions between U.S. broker-dealers and Canadian broker-dealers, the Commission finds good cause for so approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing.[6] The Commission also notes that during the previous temporary approval periods neither SCCP, Philadep, nor the Commission have received any adverse comments regarding the adoption of Article 8 of the New York UCC.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making such submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552 will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal offices of Philadep and SCCP. All submissions should refer to File Nos. SR–Philadep–96–20 SR–SCCP–96–09 and should be submitted by January 28, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–Philadep–96–20 and SR–SCCP–96–09) be, and hereby are, approved on an accelerated basis.

For the Commission by the Division of Market Regulation pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–241 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78q-1(b)(3)(F).

[4] Securities Exchange Act Release Nos. 36781 and 37382, *supra* note 2.

[5] For a complete description of the clearance and settlement activities among CDS, Philadep, and SCCP, refer to Securities Exchange Act Release No. 37918 (November 8, 1996), 61 FR 57938 [File No. SR–Philadep–96–17] (order granting accelerated approval on a temporary basis of a proposed rule change to appoint CDS as a correspondent depository).

[6] The staff of the Board of Governors of the Federal Reserve System has concurred with the Commission's granting of accelerated approval. Telephone conversation between John Rudolph, Board of Governors of the Federal Reserve System, and Chris Concannon, Staff Attorney, Division of Market Regulation, Commission (December 30, 1996).

[7] 17 CFR 200.30-3(a)(12).

[Release No. 34–38104; File No. SR-PHLX–96–51]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Extension of the Automated Options Market Pilot Program

December 31, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 6, 1996, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is approving this proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to extend the Exchange's Automated Options Market (''AUTOM'') system pilot program for a six month period ending June 30, 1997.

The text of the proposal is available at the Office of the Secretary, the PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

AUTOM, which has operated on a pilot basis since 1988 and was most recently extended through December 31, 1996,[1] is the PHLX's electronic order routing, delivery, execution and reporting system for equity and index options. AUTOM is an on-line system that allows electronic delivery of options orders from member firms directly to the appropriate specialist on the Exchange's trading floor.

Certain orders are eligible for AUTOM's automatic execution feature, AUTO-X, which was approved as part of the AUTOM pilot program in 1990.[2] AUTO-X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the Options Price Reporting Authority (''OPRA'') as well as the originating firm. Orders that are not eligible for AUTO-X are handled manually by the specialist and, upon execution of the order, are inputted into Exchange systems for reporting to OPRA and the delivering firm.

Originally, the AUTOM pilot program was approved by the Commission for market orders of up to five contracts for 12 PHLX near-month equity options.[3] Since that time, AUTOM has been amended and extended several times, generally in one-year increments.[4]

In the most recent extension of the pilot program until December 31, 1996,[5] the Commission stated that the Exchange's request for permanent approval should be accompanied by a report covering the period between January 1, 1996, and June 30, 1996, describing: (1) the benefits provided by AUTOM; (2) the degree of AUTOM usage, including the number and size of the orders routed through AUTOM and the number and size of the orders executed automatically through the AUTO–X system; (3) the system capacity of AUTOM and AUTO–X; and (4) any problems the Exchange has encountered with the routing and execution features. Generally, the Exchange believes that AUTOM has functioned properly and efficiently since the last extension of the pilot program.

Thus, the PHLX proposes to extend the AUTOM pilot program for a six-month period ending June 30, 1997. The PHLX believes that this should provide time for the Exchange to submit a proposed rule change requesting permanent approval of AUTOM as well as an AUTOM rule to govern the system. During this time, the PHLX can continue to study the effectiveness of AUTOM prior to permanent approval.

According to the PHLX, AUTOM provides option orders with the benefits of electronic delivery and reporting, while AUTO–X provides automatic executions. Accordingly, the Exchange believes that AUTOM increases the speed and efficiency of order delivery, execution and reporting. This, in turn, promotes liquidity as well as fair and orderly markets. For these reasons, the PHLX believes that extending the AUTOM pilot program for six months through June 30, 1997, is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, and to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with Section 11A(a)(1)(B) of the Act in that AUTOM is intended to improve,

[1] *See* Securities Exchange Act Release No. 36582 (December 13, 1995), 60 FR 65364 (December 19, 1995) (order approving File No. SR-PHLX–95–78) (''1996 AUTOM Order'').

[2] *See* Securities Exchange Act Release No. 27599 (January 9, 1990), 55 FR 1751 (January 18, 1990) (order approving File No. SR-PHLX–89–03).

[3] *See* Securities Exchange Act Release No. 25540 (March 31, 1988), 53 FR 11390 (April 6, 1988).

[4] *See* 1996 AUTOM Order, *supra* note 1. *See also* Securities Exchange Act Release Nos. 25540 (March 31, 1988), 53 FR 11390 (April 6, 1988) (order approving AUTOM on a pilot basis); 25868 (June 30, 1988), 53 FR 25563 (order approving File No. SR-PHLX–88–22, extending pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (order approving File No. SR-PHLX–88–33, extending pilot program through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (order approving File No. SR-PHLX–89–1, extending pilot through December 31, 1989); 27599 (January 9, 1990), 55 FR 1751 (order approving File No. SR-PHLX–89–03, extending pilot through June 30, 1990); 28625 (July 26, 1990), 55 FR 31274 (order approving File No. SR-PHLX–90–16, extending pilot through December 31, 1990); 28978 (March 15, 1991), 56 FR 12050 (order approving File No. SR-PHLX–90–34), extending pilot through December 31, 1991); 29837 (October 18, 1991), 56 FR 36496 (order approving File No. SR-PHLX–90–03, extending pilot through December 31, 1993); 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR-PHLX–93–57, extending pilot through December 31, 1994); 35183 (December 30, 1994), 60 FR 2420 (January 9, 1995) (order approving File No. SR-PHLX–94–41, extending pilot through December 31, 1995); 29662 (September 9, 1991), 56 FR 46816 (order approving File No. SR-PHLX–91–31, permitting AUTO-X orders up to 20 contracts in Duracell options only); 29782 (October 3, 1991), 56 FR 55146 (order approving File No. SR-PHLX–91–33, permitting AUTO-X for all strike prices and expiration months); 32906 (September 15, 1993), 58 FR 15168 (order approving File No. SR-PHLX–92–38, permitting AUTO-X orders up to 25 contracts in all options); and 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR-PHLX–93–57, extending pilot through December 31, 1994); 34920 (October 31, 1994), 59 FR 55510 (November 7, 1994) (File No. SR-PHLX–94–40, codifying use of AUTOM for index options); 35601 (April 13, 1995), 60 FR 19616 (File No. SR-PHLX–95–18, codifying the use of AUTOM for certain order types); 35681 (May 30, 1995), 60 FR 30131 (June 7, 1995) (File No. SR-PHLX–95–29, increasing AUTO-X for USTOP 100 Index (''TPX'') options to 50 contracts); 35782 (May 30, 1995), 60 FR 30136 (June 7, 1995) (File No. SR-PHLX–95–30, increasing the maximum AUTOM order size from 100 to 500 contracts); 36429 (October 27, 1995), 60 FR 55874 (November 3, 1995) (File No. SR-PHLX–95–35, allowing broker-dealer TPX option orders to be routed through AUTOM); and 36467 (November 8, 1995), 60 FR 57615 (November 16, 1995) (order approving File No. SR-PHLX–95–33, limiting AUTO-X for National Over-the-Counter Index options to series where the bid is $10 or less).

[5] *See* 1996 AUTOM Order, *supra* note 1.

through the use of new data processing and communications techniques, the efficiency with which transactions in PHLX equity and index options are executed. Further, the Exchange believes that AUTOM fosters competition among options exchanges, which have similar systems in place.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6 and 11A.[6] Specifically, the Commission continues to believe that the development and implementation of the AUTOM system provides for more efficient handling and reporting of orders in PHLX options through the use of new data processing and communications techniques, thereby improving order processing and turnaround time.[7] The Commission does not object to an extension of the pilot program until June 30, 1997, in response to the PHLX's assertion that continuation of the pilot will provide the Exchange with an opportunity to continue to study its effectiveness prior to permanent approval of the program.[8]

The Commission notes further that the Exchange has represented that from January 1996 through November 1996, no significant problems have been reported with AUTOM's routing or execution functions, which have functioned properly and efficiently.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register in order to permit the PHLX to continue the AUTROM pilot program on an uninterrupted basis. Specifically, the Commission believes that the PHLX's proposal to extend the AUTOM pilot program does not raise any new issues since it merely extends the pilot program as it is currently operating. Further, the Commission believes that the pilot is beneficial in maintaining the quality and efficiency of the PHLX's market. In addition, the Commission notes that there have been no adverse comments concerning the pilot program since its implementation. Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 11A of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days after the date of this publication].

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–PHLX–96–51) is approved through June 30, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–235 Filed 1–6–97; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. § 78f and 78k–1 (1988).

[7] In approving the rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[8] The PHLX will submit a request for permanent approval of the program no later than May 1, 1997. This request will be accompanied by a report covering the period between June 30, 1996, and January 1, 1997, that will include: (1) a description of the benefits provided by AUTOM; (2) the degree of AUTOM usage, including the number and size of the orders routed through AUTOM and the number and size of the orders executed automatically through the AUTO–X system; (3) the system capacity of AUTOM and AUTO–X; and (4) any problems the Exchange has encountered with the routing and execution features.

[9] 15 U.S.C. § 78s(b)(2) (1982).

[10] 17 CFR 200.30–3(a)(12) (1995).

[Release No. 34–38100; File Nos. SR–SCCP–96–10 and SR–Philadep–96–19]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of Proposed Rule Changes Relating to Participants Fund Formulas

December 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 15, 1996, the Stock Clearing Corporation of Philadelphia (''SCCP'') and the Philadelphia Depository Trust Company (''Philadep'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes (File Nos. SR–SCCP–96–10 and SR–Philadep–96–19) as described in Items I and II below, which items have been prepared primarily by SCCP and Philadep. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval on a temporary basis of the proposed rule changes through June 30, 1997.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes seek permanent approval of SCCP's and Philadep's participants fund formulas. On February 22, 1996, the Commission granted partial temporary approval to proposed rule changes establishing SCCP's and Philadep's participants fund formulas in connection with the industry conversion to same-day funds settlement (''SDFS'').[2] On August 29, 1996, the Commission extended the

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release Nos. 36875 (February 22, 1996), 61 FR 7846 [SR–SCCP–95–06] and 36876 (February 22, 1996), 61 FR 7841 [SR–Philadep–95–08] (orders granting partial permanent and partial temporary approval through August 31, 1996, of proposed rule changes).

temporary approval of the proposed rule changes through December 31, 1996.[3]

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, SCCP and Philadep included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments that they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. SCCP and Philadep have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

On February 22, 1996, SCCP and Philadep converted their processing environment from a next-day funds settlement system to a SDFS system. In an effort to reduce risk in a SDFS environment, SCCP and Philadep put in place a new system and new controls with enhanced processing capabilities. As a part of their conversion to SDFS, SCCP and Philadep established new participants fund formulas.

Both Philadep's and SCCP's Rule 4, which govern the participants fund and the procedures regarding the participants fund formulas, currently provide for an all cash participants funds. The all cash requirement applies to both the required deposits and any additional or voluntary deposits made by participants.

Pursuant to Rule 4 of SCCP's rules and the procedures thereunder, SCCP calculates participants' required cash deposits pursuant to the following formulas:

(a) Inactive Account: $5,000[5]

(b) Full Service (''CNS'') Account—The contribution of a CNS Participant is based upon the larger of: (1) the participant's monthly average of trading activity during the preceding three months, $1,000 for every twenty-five trading units of one hundred shares; or (2) the participant's aggregate dollar amount of all long trades at their execution price for the prior three months divided by the number of days in the prior three months multiplied by two percent. The required contributions are rounded upward to $5,000 increments, and the average is a rolling average.

(c) Regional Interface Operations (''RIO'') Account—The contribution of a RIO Participant is based on the participant's monthly average of trading activity during the preceding three months, $1,000 for every twenty-five trading units of one hundred shares (with a $10,000 minimum and a $75,000 maximum contribution). The required contributions are rounded upward to $5,000 increments. A RIO Account is defined as a participant account whereby the participant elects to settle with a clearing corporation other than SCCP.

(d) Layoff Account—The contribution of a Layoff Participant is set at a uniform rate of $25,000. A Layoff Participant Account is defined as a participant account whereby the participant elects to settle with a clearing corporation other than SCCP for trades not executed on the Philadelphia Stock Exchange.

(e) Specialist Margin Account—The contribution of a Specialist Margin Participant is set at a uniform rate of $35,000.

(f) Non-Specialist Margin Account—The contribution of a Non-Specialist Margin Participant is set at a uniform rate of $35,000.

Pursuant to Rule 4 of Philadep's rules and the procedures thereunder, Philadep calculates participants' required cash deposit pursuant to the following formulas:

(a) Inactive Accounts: $5,000.00[6]

(b) Specialized Services: (maximum $50,000 required with $100 or greater in average monthly billings for either Deposit or Transfer activity)

—Deposit Activity: $25,000.00 plus

—Transfer Activity: $25,000.00

(c) Participants not doing Specialized Service activity with service fees of $100 or greater in average monthly billings. The greater of either:

(1) $25,000 or

(2) 1% of the average of the three highest net debits over the past three months (rounded to the next $5,000 increment).

Both SCCP and Philadep recalculate each participant's deposit requirement at the end of each month based on a participant's activity for the previous three months prior to the most recent month. SCCP and Philadep notify their participants of the amount of any required deposit increase within ten business days of the end of the month. Participants whose deposit requirements have decreased are notified at least quarterly although they may inquire and withdraw excess deposits monthly. Participants may leave excess cash deposits in the participants fund. SCCP participants with deposits in excess of $50,000 receive interest rebates from SCCP.

The temporary approval periods for SCCP's and Philadep's participants fund formulas expire on December 31, 1996. Therefore, SCCP and Philadep have requested that the Commission permanently approve their participants fund formulas.

SCCP and Philadep believe the proposed rule changes are consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposals will promote the prompt and accurate clearance and settlement of securities transactions and will assure the safeguarding of securities and funds in the custody or control of SCCP and Philadep or for which SCCP and Philadep are responsible.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

SCCP and Philadep do not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

No written comments have been solicited or received. SCCP and Philadep will notify the Commission of any written comments received by SCCP and Philadep.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[7] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. While the Commission believes at this time that some of SCCP's and Philadep's participants fund formulas are consistent with this obligation, the Commission continues to have concerns about the adequacy of some of SCCP's and Philadep's participants fund formulas in providing a sufficient source of cash liquidity and in meeting the standards set forth by the

[3] Securities Exchange Act Release Nos. 37623 (August 29, 1996), 61 FR 47229 [SR–SCCP–96–07] (order granting temporary approval through December 31, 1996 of a proposed rule change) and 37625 (August 30, 1996), 61 FR 47227 [SR–Philadep–9–14] (order granting partial permanent approval and partial temporary approval of a proposed rule change through December 31, 1996).

[4] The Commission has modified the text of the summaries submitted by SCCP and Philadep.

[5] Securities Exchange Release No. 37554 (August 9, 1996), 61 FR 42929 [File No. SR–SCCP–96–03] (order granting temporary approval of a proposed rule change to establish a separate participant category for inactive accounts through December 31, 1996).

[6] Securities Exchange Release No. 37554 (August 9, 1996), 61 FR 42929 [File No. SR–Philadep–96–07] (order granting temporary approval of a proposed rule change to establish a separate participant category for inactive accounts through December 31, 1996).

[7] 15 U.S.C. 78q–1(b)(3)(F).

Division of Market Regulation (''Division'').[8]

The Commission believes that clearing agencies operating SDFS systems must have sufficient liquidity from a combination of cash and lines of credit to ensure that settlement occurs at the end of the business day even if a participant fails to settle with the clearing agency or if the clearing agency experiences a systems problem. The Commission further believes that a clearing agency must have immediate access to an amount of cash which will enable the clearing agency to fund settlement for most participant failures or systems problems without having to immediately draw on its lines of credit (*i.e.*, a clearing agency's lines of credit should be its secondary source of liquidity and not its primary source). Given the demand for liquidity under an SDFS environment and in light of SCCP's use of its participants fund to finance specialists purchases, the Commission has concerns about the sufficiency of the levels of cash liquidity provided by SCCP's and Philadep's formulas.[9] For these reasons, the Commission is approving the proposed rule changes through June 30, 1997, in order that the Commission, SCCP, and Philadep can continue to analyze the adequacy of SCCP's and Philadep's participants formulas.

SCCP and Philadep have requested that the Commission approve the proposed rule changes on an accelerated basis. The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing because the proposed rule changes will allow SCCP and Philadep to continue to apply their participants fund formulas when the current temporary approvals expire on December 31, 1996.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP and Philadep.

All submissions should refer to file numbers SR–SCCP–96–10 and SR–Philadep–96–19 and should be submitted by January 28, 1997.

It is therefore ordered pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–SCCP–96–10 and SR–Philadep–96–19) be, and hereby are approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–233 Filed 1–6–97; 8:45 am]

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[8] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (order publishing standards to be used by the Division in reviewing the grant of full registration of clearing agencies).

[9] For a complete description of SCCP's and Philadep's financing program, refer to Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (order approving full registration of SCCP, Philadep, *et al.*).

[10] The staff of the Board of Governors of the Federal Reserve System has concurred with the Commission's granting of accelerated approval of Philadep's proposed rule change. Telephone conversation between John Rudolph, Board of Governors of the Federal Reserve System, and Chris Concannon, Staff Attorney, Division, Commission (December 30, 1996).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request extensions for eight currently approved information collections coming up for renewal, and reinstatement, without change, of a previously approved collection for which approval has expired. The Federal Register Notice with a 60-day comment period soliciting comments on the following collections of information was published on October 22, 1996 [FR 61, page 54832]. 1. Transfer Procedures/Waste Management Plans; 2. Vital System Automation; and 3. Vessels Reporting Requirements. The Federal Register Notice with a 60-day comment period soliciting comments on the following collections of information was published on October 29, 1996 [FR 61, page 55834–55835]. These ICRs include: 1. Boating Accident Report; 2. Certificate of Discharge to Merchant Mariners; 3. Report of Oil or Hazardous Substance Discharge; 4. Plan Approval and Records for Marine Engineering Systems; 5. Benzene; and 6. Vessel Identification System (VIS).

DATES: Comments on this notice must be received on or before February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

U.S. Coast Guard

1. Title: Boating accident Report.
OMB Control Number: 2115–0010.
Form Number(s): CG–3865, CG–3865A.
Type of Request: Extension of a currently approved collection.
Affected Entities: Operators of recreational boats.
Abstract: The collection of information requires operators of recreational boats that are involved in an accident to notify the nearest reporting authority of the accident and submit a casualty or accident report to that authority.
Need: Title 46 U.S.C. 6102(a) requires the establishment of a uniform marine casualty reporting system, with regulations prescribing casualties to be reported and the manner of reporting. The statute requires a State to compile and submit to the Coast Guard; reports, information and statistic on casualties that are reported to the State.
Estimated Burden: The estimated burden is 4,232 hours annually.

2. Title: Certificate of Discharge to Merchant Mariners.
OMB Control Number: 2115–0042.
Form Number(s): CG–718A.
Type of Request: Extension of a currently approved collection.
Affected Entities: Masters or Mates of Shipping Companies and Merchant Mariners.
Abstract: This collection of information requires a master or mate of a shipping company to submit information on merchant mariners to the U.S. Coast Guard that: (1) establishes their sea service time; (2) sets forth their qualifications for their original or upgrading their existing credentials; and

(3) sets forth their qualifications for retirement or insurance benefits.

Need: Under Title 46 U.S.C. 10311, the information collected is used to show eligibility for merchant mariners documents and to provide information to the Maritime Administration on the availability of mariners in a time of National emergency.

Estimated Burden: The estimated burden is 4,500 hours annually.

3. Title: Transfer Procedures/Waste Management Plans.

OMB Control Number: 2115–0120.

Type of Request: Extension of a currently approved collection.

Form Number(s): N/A.

Affected Entities: Vessel and facility owners or operators.

Abstract: The collection of information requires vessels with a capacity of 250 or more barrels of oil to develop and maintain on board the vessel, oil transfer procedure plans which will provide basic safety information for operating the transfer system. (1) Vessels with a capacity of 250 or more barrels of oil must have written procedures for transferring oil to and from the vessel and from tank to tank and must follow the written procedures in operating the transfer system; (2) vessels with vapor control systems must include operating procedures and a line diagram of the system in the vessel's transfer procedures; (3) tank vessels with a capacity of 1,000 or more cubic meters that load oil or oil residue as cargo must include procedures regarding overfill devices in the transfer procedures; and (4) all oceangoing ships 40 feet or more in length, engaged in commerce or equipped with galleys and berths, must maintain management plans for the handling and disposal of ship generated-garbage.

Estimated Burden: The estimated burden is 29,797 hours annually.

4. Title: Report of Oil or Hazardous Substance Discharge.

OMB Control Number: 2115–0137.

Type of Request: Extension of a currently approved collection.

Form Number(s): N/A.

Affected Entities: Persons in charge of a vessel or onshore/offshore facility.

Abstract: The collection of information requires any person in charge of a vessel or an onshore or offshore facility to report to the National Response Center, as soon as they have knowledge of, any discharge of oil or hazardous substance by telephone, radio, telecommunication or a similar means of rapid communication.

Need: Title 49 CFR 171.15, 33 CFR 153.203 and 40 CFR 264, mandates that the National Response Center be the central place to report all pollution spills by the public.

Estimated Burden: The estimated burden is 32,832 hours annually.

5. Title: 46 CFR Subchapter F—Plan Approval and Records for Marine Engineering Systems.

OMB Control Number: 2115–0142.

Type of Request: Extension of a currently approved collection.

Form Number(s): N/A.

Affected Entities: Owners and builders of commercial vessels.

Abstract: The collection of information requires owners or builders of commercial vessels to submit to the U.S. Coast Guard for review and approval, plans pertaining to the marine engineering system prior to construction to ensure that the vessel, if built in accordance with the plans, will meet the regulatory standards.

Need: Under 46 U.S.C. 3306, 46 U.S.C. 8105, and 49 CFR 1.46, the U.S. Coast Guard has promulgated safety regulations for the marine engineering systems on board commercial vessels to ensure that safety standards are met.

Estimated Burden: The estimated burden is 5,304 hours annually.

6. Title: Vital System Automation: 46 CFR Parts 52, 56, 58, 61, 62, 110, 111 and 113.

OMB Control Number: 2115–0548.

Type of Request: Extension of a currently approved collection.

Form Number(s): N/A.

Affected Entities: Vessel designers, shipyards, manufacturers and owners of inspected commercial vessels.

Abstract: The collection of information requires the vital machinery and engineering spaces of inspected commercial vessels to be automated for the convenience of operation, improvement of efficiency, reduction of personnel and the detection and control of unsafe conditions.

Need: Under 46 U.S.C. 3306, 46 U.S.C. 8105 and 49 CFR 1.46, the Coast Guard promulgated safety regulations for automated vital systems on inspected commercial vessels to ensure safety of life at sea.

Estimated Burden: The estimated burden is 14,400 hours annually.

7. Title: Vessel Reporting Requirements.

OMB Control Number: 2115–0551.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Form Number(s): N/A.

Affected Entities: Owners, charterers, managing operators, or agents.

Abstract: The collection of information requires the owner, charterer, managing operator or agent of a U.S.-flagged vessel to immediately notify the Coast Guard if there is reason to believe the vessel is in distress or lost. The report must be followed up with written confirmation within 24 hours to the Coast Guard.

Need: Title 46 U.S.C. 2306 authorizes the Coast Guard to implement the reporting requirements necessary to determine if a vessel is in distress or lost and to take appropriate action to provide needed assistance.

Estimated Burden: The estimated burden is 93 hours annually.

8. Title: Benzene.

OMB Control Number: 2115–0586.

Type of Request: Extension of a currently approved collection.

Form Number(s): N/A.

Affected Entities: Owners of inspected vessels, tank ships and barges.

Abstract: The collection of information requires owners of U.S. Coast Guard inspected vessels, including tank ships and barges that transport benzene (except vessels of foreign registry) to: (1) test and monitor those vessels for benzene vapor; (2) provide medical surveillance, training and other protective measures for those employees exposed to benzene vapor in excess of the action level; and (3) keep records to show that they have met each requirement.

Need: Under 46 U.S.C. 3703 and 49 CFR 1.46 the Coast Guard is authorized to issue regulations dealing with the handling and storage of cargo and the protection of life and property in the marine area.

Estimated Burden: The estimated burden is 59,755 hours annually.

9. Title: Vessel Identification System (VIS).

OMB Control Number: 2115–0607.

Type of Request: Revision of a currently approved collection.

Form Number(s): N/A.

Affected Entities: State agencies and U.S. Territories.

Abstract: The collection of information requires States and U.S. Territories, who wish to participate, to provide data on State numbered and titled recreational vessels to a central database known as the ''Vessel Identification System'' (VIS) which is maintained by the U.S. Coast Guard.

Need: Under Title 46 U.S.C. Chapters 121, 123, 125 and 33 CFR, Part 187, the U.S. Coast Guard has established a national vessel identification system for State numbered and titled vessels to be used by State and Federal agencies and local law enforcement.

Estimated Burden: The estimated burden is 2,057 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory

Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention DOT Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on December 30, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–284 Filed 1–6–97; 8:45 am]

BILLING CODE 4910–62–P

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 12, 1996 (61 FR page 41820) and March 28, 1996 (61 FR page 13918) respectively.

DATES: Comments must be submitted on or before February 6, 1997.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and refer to the OMB Control Number.

SUPPLEMENTARY INFORMATION: Research and Special Programs Administration (RSPA).

Title: Management Information System (MIS) Standardized Data Collection and Reporting of Drug Testing Materials.

OMB Control Number: 2137–0579.

Form Number(s): N/A.

Affected Entities: Pipeline operators.

Type of Request: Extension of an existing information collection.

Abstract: Drug abuse is a major societal problem and it is reasonable to assume the problem exists in the pipeline industry as it does in society as a whole. The potential harmful effect of drug abuse on safe pipeline operations warrants imposing comprehensive drug testing regulations on the pipeline industry. These rules are found in 49 CFR Part 199. These regulations require annual information collection of the results of the drug testing program.

Estimated Total Annual Burden on Respondents: The estimated burden is 59,755 hours annually.

Title: Alcohol Misuse Prevention Program.

OMB Number: 2137–0587.

Form Number(s): N/A.

Type of Request: Extension of an existing information collection.

Affected Entities: Pipeline Operators.

Abstract: Alcohol misuse has been identified by the Federal government as a significant danger to safety in the United States, and it is reasonable to assume that the problem exists in the pipeline industry. The potential harmful effects of alcohol misuse on safe pipeline operations warrant the comprehensive alcohol misuse testing regulation imposed on the pipeline industry. These rules (49 CFR Part 199) require information collection in the form of an alcohol misuse prevention plan and associated recordkeeping.

Estimated Total Annual Burden: The estimated burden is 10,278 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention DOT Desk Officer.

Comments are invited on: the need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on December 30, 1996.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–285 Filed 1–6–97; 8:45 am]

BILLING CODE 4910–60–P

The Secretary of Transportation Has Now Determined That Eldorado International Airport, Bogota, Colombia, Maintains and Carries Out Effective Security Measures

Notice

By notice published on September 21, 1995, I announced that I had determined that Eldorado International Airport, Bogota, Colombia, did not maintain and administer effective security measures and that, pursuant to 49 U.S.C. 44907(d), I was providing public notification of that determination. I now find that Eldorado International Airport maintains and carries out effective security measures. My determination is based on a recent Federal Aviation Administration (FAA) assessment which reveals that security measures used at the airport now meet or exceed the Standards and Recommended Practices established by the International Civil Aviation Organization.

I have directed that a copy of this notice be published in the Federal Register and that the news media be notified of my determination. In addition, as a result of this determination, the FAA will direct that signs posted in U.S. airports relating to my September 15, 1995, determination be removed, and U.S. and foreign air carriers will no longer be required to provide notice of that determination to passengers purchasing tickets for transportation between the United States and Bogota, Colombia.

Dated: December 20, 1996.

Federico Peña,

Secretary of Transportation.

[FR Doc. 97–286 Filed 1–6–97; 8:45 am]

BILLING CODE 4910–60–P

Surface Transportation Board

[STB Finance Docket No. 33319]

Charles City Area Development Corporation—Acquisition and Operation Exemption—Trains Unlimited, Incorporated

Charles City Area Development Corporation has filed a verified notice of exemption under 49 CFR 1150.31: (1) to acquire and operate a total of

approximately 3.6 miles of rail line owned by Trains Unlimited and located at Charles City, in Floyd County, IA (the Charles City line), between milepost 0.0 and milepost 3.6. The proposed transaction was expected to be consummated on December 18, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33319 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Thomas F. McFarland, Jr., McFarland & Herman, 20 North Wacker Drive, Suite 1330, Chicago, IL 60606–2902.

Decided: December 30, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–182 Filed 1–6–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Renegotiation Board Interest Rate; Prompt Payment Interest Rate; Contract Dispute Act

Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 (P.L. 92–41). For example, the Contract Dispute Act of 1978 (P.L. 95–563) and the Prompt Payment Act (P.L. 97–177) provide for the calculation of interest due on claims at a rate established by the Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97) for the Renegotiation Board (31 U.S.C. 3902).

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning January 1, 1997 and ending on June 30, 1997, is 6⅜ percentum per annum.

Dated: December 27, 1996.

Donald V. Hammond,

Deputy Fiscal Assistant Secretary.

[FR Doc. 97–199 Filed 1–6–97; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INSTITUTE OF PEACE

Sunshine Act Meeting

AGENCY: United States Institute of Peace.

DATE/TIME: Thursday, January 23, 1997, 9:00 a.m–5:30 p.m.

LOCATION: 1550 M Street, NW., M Street Lobby Conference Room, Washington, DC 20005.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: January Board Meeting; Approval of Minutes of the Seventy-eighth Meeting of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Review of Unsolicited Grant Applications; Selection of 1998 National Peace Essay Contest Topic; Other General Issues.

CONTACT: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: January 2, 1997.

Charles E. Nelson,

Vice President for Management and Finance, United States Institute of Peace.

[FR Doc. 97–446 Filed 1–3–97; 3:53 pm]

BILLING CODE 6820–AR–M

Corrections

Federal Register
Vol. 62, No. 4
Tuesday, January 7, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1304

[DEA-143P]

RIN 1117-AA36

Establishment of Freight Forwarding Facilities for DEA Distributor Registrants

Correction

In proposed rule document 96–32077 beginning on page 66637 in the issue of Wednesday, December 18, 1996, make the following correction:

§1301.02 [Corrected]

On page 66638, in the third column, §1301.02 (m), in the last line in the paragraph, ''returners'' should read ''returns''.

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 95-1]

Margaret E. Sarver, M.D., Suspension of Registration; Reinstatement With Restrictions

Correction

In notice document 96–28766 beginning on page 57896 in the issue of Friday, November 8, 1996 make the following corrections:

1. On page 57899, in the second column, in the second paragraph, in the ninth line from the bottom, ''codeine produces'' should read ''codeine products''.

2. On the same page, in the third column, in the last paragraph, in the eleventh line from the bottom, insert ''glutethimide'' after ''Respondent's''.

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 95-11]

Stanley Dubin, D.D.S.; Revocation of Registration

Correction

In notice document 96–30378 beginning on page 60727 in the issue of Friday, November 29, 1996 make the following correction:

On page 60728, in the second column, in the first full paragraph, in the last line, ''January 28, 1997'' should read ''December 30, 1996''.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107 and 108

[Docket No. 28745; Amendment Nos. 107-9 and 108-14]

RIN 2120-AG27

Falsification of Security Records

Correction

In rule document 96–30776 beginning on page 64242 in the issue of Tuesday, December 3, 1996 make the following correction:

On page 64243, in the first column, in the third full paragraph, in the first line, ''FDA'' should read ''FAA''.

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA #153F]

Controlled Substances: Established Initial 1997 Aggregate Production Quotas

Correction

In notice document 96–31889 beginning on page 66311 in the issue of Tuesday, December 17, 1996, make the following correction:

On page 66313 add the following seven entries that were inadvertently omitted from the table.

Pentobarbital	16,772,000
Phencyclidine	60
Phenmetrazine	2
Phenylacetone	10
Secobarbital	491,000
Sufentanil	1,000
Thebaine	9,325,000

BILLING CODE 1505–01–D

Federal Register

Tuesday
January 7, 1997

Part II

Department of Housing and Urban Development

Site-Based Waiting Lists; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4131–N–01]

Notice on Site-Based Waiting Lists

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, and Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice invites certain public housing agencies (''PHAs'') to request approval of tenant selection and assignment plans that vary from general program requirements in order to implement site-based waiting lists at public housing sites under certain circumstances. The notice explains HUD policy on this matter and describes the procedure for making such requests. HUD will approve under this notice only those requests that are consistent with Title VI of the Civil Rights Act of 1964 (''Title VI'') and that meet the other requirements of this notice.

EFFECTIVE DATE: January 7, 1997.

COMMENT DUE DATE: March 10, 1997.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Senior Director for Policy and Legislation, or Stephen I. Holmquist, Policy Development Advisor, Office of Policy, Program, and Legislative Initiatives, Room 4116, (202) 708–0713, or Linda Campbell, Director, Marketing, Leasing and Management Division, Office of Public and Assisted Housing, Room 4206, (202) 708–0744, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–0713; or Larry Pearl, Office of Fair Housing and Equal Opportunity, Room 5226, (202) 708–0288, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–4252. Hearing or speech-impaired individuals may access these numbers via TTY by calling the Federal Information Relay Service at 1–800–877–8339. (With the exception of the ''800'' number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been approved and assigned OMB control number 2577–0214, which expires March 31, 1997. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

II. Solicitation of Comments

HUD invites comments on this notice. The comments will be taken into consideration in the event HUD decides to revise the procedures.

III. Site-Based Waiting Lists

1. Purpose

This notice invites certain public housing agencies (''PHAs'') to request approval of tenant selection and assignment plans that vary from general program requirements in order to implement site-based waiting lists at public housing sites under certain circumstances. The notice explains HUD policy on this matter and describes the procedure for making such requests. HUD will approve under this notice only those requests that are consistent with Title VI of the Civil Rights Act of 1964 (''Title VI'') (42 U.S.C. 2000d–1 *et seq.*) and that otherwise meet the requirements of this notice.

2. Applicability

This notice applies only to PHAs that have Annual Contributions Contracts covering a total of 1,250 or more public housing units. For each such PHA, the applicability of this notice (under the criteria described below in this Section) may be determined with respect to all of the PHA's public housing sites, or may be determined separately with respect to either the PHA's mixed-population and elderly-designated sites or the PHA's general occupancy sites (i.e., all sites other than mixed-population and elderly-designated sites). Regardless of which of these options a PHA chooses, this notice is applicable where:

(a) At least 90 percent of the occupants of the sites and at least 90 percent of the applicants on the applicable public housing waiting list(s) are persons of the same race; or

(b) At least 90 percent of the occupants of the sites and at least 90 percent of the applicants on the applicable public housing waiting list(s) are of the same ethnicity.

This notice does not apply to PHAs which are operating under a court order involving civil rights violations; to PHAs for which HUD has made a determination of apparent non-compliance with Title VI or which are currently operating under a Voluntary Compliance Agreement; or to PHAs that are operating under a settlement or conciliation agreement providing for class-wide relief for race or national origin discrimination under the Fair Housing Act.

HUD's authority under 24 CFR 1.4(b)(2)(iii) to approve tenant selection and assignment plans that vary from general program requirements remains in effect for PHAs that do not fit within the bounds of this notice.

For purposes of this notice, each ''site'' may consist of:

(a) One public housing development,

(b) More than one public housing development (by reason of proximity or other geographic characteristics), or

(c) A portion of one or more public housing developments (in the case of scattered-site developments), as proposed by the PHA and approved by HUD under this notice. For purposes of this notice, a PHA proposing site-based waiting lists at its general occupancy sites must include all of its general occupancy units in an identified site, and a PHA proposing site-based waiting lists at its mixed population and elderly-designated sites must include all of its mixed population and elderly-designated units in an identified site.

3. Background.

Title VI prohibits discrimination on the grounds of race, color, and national origin in any program or activity receiving Federal financial assistance. PHAs, as recipients of HUD funds, are barred by Title VI from subjecting housing residents to segregation or separate treatment on any of these grounds. HUD has implemented Title VI through regulations at 24 CFR part 1. With respect to public housing admissions, the provisions of 24 CFR 1.4(b)(2)(ii) require PHAs to assign eligible applicants to dwelling units in accordance with a plan providing for assignment on a community-wide basis. Under this authority, HUD generally requires assignment of applicants to dwelling units from a single waiting list (although PHAs may have one waiting list for general occupancy units and another for mixed population and elderly-designated units). However, HUD also has existing authority to approve plans that vary from the general requirement when such plans involve housing programs in which persons of one race or of one ethnicity predominate and when such plans would be consistent with Title VI. For the reasons stated below, this notice invites PHAs to request approval of such plans.

PHAs that do not meet the criteria set forth in Section 2 of this notice may request approval of site-based waiting lists. However, such requests will not be considered under the special processing guidelines in this notice.

4. Statement and Explanation of HUD Policy

Federal funding of public housing began with the United States Housing Act of 1937. For the first 25 years of that Act, the Federal government permitted, if not encouraged, segregation by race in public housing developments. Active attempts by the Federal government to desegregate public housing began only with Executive Order 11063 issued by President Kennedy in November 1962. The order banned discrimination prospectively in federally funded housing, but sought to end discrimination in existing developments only through persuasion and voluntary activity. Executive Order 11063 was followed by passage of the 1964 Civil Rights Act, Title VI of which barred discrimination in all federally assisted programs and provided for termination of funding where discrimination continued.

Policies to implement Title VI through tenant selection and assignment policies thereafter took a variety of forms. The first iteration embodied ''freedom of choice'' principles. Applicants were allowed to apply to the housing development of their choice based on available units and their place on a waiting list. During implementation of this policy, segregation did not appreciably diminish. Freedom of choice policies did not address the effects of the site selection process, by which developments had been located in all-white and all-black areas with tenants assigned accordingly. In many cases, the choice for tenants after these patterns were established was between an all-black development in a black neighborhood or an all-white development in a white neighborhood. An integrated development, much less an integrated neighborhood, was rarely an option. Even assuming fair administration of the policy, which was not always the case, it did not effectively address the complexities of the legacy of segregation.

HUD next required PHAs to adopt community-wide waiting lists in which applicants were offered vacancies based on tenant selection preferences and the date and time of application. If offers were rejected, the applicants lost their standing on the waiting list. In spite of this effort, segregation continued, apparently unabated and the situation in many communities grew worse; compliance was spotty and mechanisms to ensure it (hearings and fund cut-offs) were either unwieldy or politically controversial. Where the policy was enforced, it sometimes acted to discourage all but the most desperate applicants. Over time, the policy led applicants to self-select: applicants willing to be placed in those developments with vacancies (often less desirable developments) tended over time to be minority families for whom public housing was a last resort.

Other low-income federally assisted housing programs created after Executive Order 11063 and Title VI provided housing in privately owned apartment buildings and developments. Unlike public housing, each private development established its own waiting list. This housing was disproportionately utilized by non-minority applicants, leading to further isolation of minority tenants in public housing. Segregation was thus exacerbated, and the use of a community-wide waiting list to promote integration in general occupancy public housing was rendered even more ineffective.

For these and other reasons, the resident populations of a number of large PHAs today are predominately of one race or of one ethnicity. Assignment of applicants to dwelling units in accordance with a plan providing for assignment from a single waiting list is not an effective means of furthering desegregation for such PHAs. Abandoning this policy in favor of one that allows applicants more options in these circumstances should not be expected to diminish civil rights protections and will likely promote other important values.

For instance, in an almost exclusively one race public housing system, it is very common to see only members of that race applying for housing with that PHA. In this situation, a change in tenant policy is unlikely to worsen segregation. It may, in fact, improve the racial diversity and integration within the PHA and its developments. Individuals may be more willing to apply for a particular public housing site with which they are familiar, even if they would be a racial minority within that site. Thus, the site-based waiting list option may increase racial or ethnic diversity within the PHA's developments. As long as it did not lead to resegregation or similar problems, the policy will likely have a positive impact on the fair housing environment within the PHA.

On the other hand, if as a result of implementing site-based waiting lists, a PHA showed signs of becoming more segregated, the fact that HUD had approved the original application for site-based lists would not insulate the PHA from compliance with Title VI and other applicable civil rights laws. This circumstance could arise if an approved PHA began marketing its various developments on a racial or ethnic basis. It could also occur if other changes in operations, such as changes to preference rules or demolition of a significant portion of the PHA's stock, appear to cause the site-based waiting list policy to have an unanticipated discriminatory impact.

Site-based waiting lists can help to foster a sense of community in public housing neighborhoods by strengthening existing ties to family, school, work, and neighborhood institutions and can also promote other policy objectives of the public housing program. For example, allowing applicants to move to the development of their choice, rather than assigning them the first available unit, may attract to public housing communities a more diverse population with a broader range of incomes. As a result, more working families may apply to and move into public housing, providing role models and possibly access to information about job opportunities for current public housing residents. Serving households with a broader range of incomes would also lead to a reduction in PHA operating subsidy needs.

In addition, recently-enacted and proposed program reforms will make PHAs in the future much more closely linked to local housing markets. PHAs will be required to make market-influenced decisions about rent levels, income range preferences, the viability of their developments, and other issues that are necessarily site-based. Site-based waiting lists could be an important part of that new approach to public housing management.

Therefore, for the reasons stated above, this notice announces that HUD will, subject to specific conditions, grant approval of tenant selection and assignment plans involving site-based waiting lists where HUD determines that, due to the predominance of persons of one race or of one ethnicity both in the current resident population and on the applicable community-wide applicant waiting list, a community-wide waiting list does not serve the goals of Title VI in any demonstrable way, and that site-based waiting lists are consistent with Title VI.

5. Submission and Review of Requests

A. PHA Submission Requirements

A PHA may request HUD approval to implement site-based waiting lists under this notice by submitting its plan and the rationale for it to HUD under the procedures described in Section 6, below. No such request shall be granted

without the approval of the Assistant Secretary for Fair Housing and Equal Opportunity (''FHEO'') and the Assistant Secretary for Public and Indian Housing (''PIH''). Any such plan must include all of the PHA's general occupancy sites and/or all of the PHA's mixed-population and elderly-designated sites. This notice does not address a PHA's request to implement site-based waiting lists at some of its sites and not at others within these two occupancy types.

A PHA's request for HUD approval of site-based waiting lists under this notice must also include the information described below. Where a site is composed of more than one development or a portion of one or more developments, then the PHA must provide the required information for both the site and for the corresponding development(s).

a. For each development/site operated by the PHA:

—The development name, development number, occupancy type (i.e., general occupancy, mixed-population, or elderly-designated), and number of units by bedroom size;

—Date the development/site originally became available for public housing occupancy;

—Whether the development/site was originally occupied on a segregated basis by race or by ethnicity (as applicable), if that information is available; and

—Racial or ethnic composition (as applicable), by bedroom size;

b. For the general occupancy and for the mixed-population and elderly-designated waiting lists, respectively, the PHA must provide the date of the oldest active application, the number of applicants on the list, the racial or ethnic composition, (as applicable), of the waiting list by bedroom size and an estimate of the length of the wait for an offer by bedroom size.

c. For the PHA's Section 8 program:

—The number of certificates and vouchers currently in use by race or by ethnicity (as applicable), and bedroom size; and

—The length and composition of the waiting list by race or by ethnicity (as applicable), and by bedroom size.

d. All location(s) (e.g., developments, sites, offices, or other places) at which the PHA accepts applications for public housing.

e. The PHA's explanation of:

(1) How the proposed site-based waiting list plan will improve the PHA's public housing program through offering greater choice to applicants, attracting working families to public housing, or through other benefits, and

(2) Why the plan is consistent with Title VI.

f. A summary of the PHA's current and proposed public housing tenant selection and assignment procedures along with a description of any Consent Decrees, Voluntary Compliance Agreements, or other documentation related to past or current occupancy problems and any measures taken to correct such problems.

B. Other Information for HUD Review

In reviewing such requests, HUD will also consider the following information, which is already available to HUD:

a. Race, ethnicity, family (i.e., non-elderly), disabled, and elderly population data for:

(1) Persons living in the relevant Metropolitan Statistical Area (''MSA'');

(2) Persons living in the PHA's jurisdiction;

(3) Income-eligible persons living in the relevant MSA; and

(4) Income-eligible persons living in the jurisdiction.

b. Racial or ethnic composition of the non-PHA housing in the neighborhood around the PHA development/site.

6. HUD Processing of Requests

PHA requests for HUD approval of site-based waiting lists shall be processed in the following manner:

a. A PHA must submit one copy of its request to the Assistant Secretary for Fair Housing and Equal Opportunity (''FHEO'') at HUD Headquarters, who shall have lead responsibility to review the request, and who shall provide a copy of it to the Assistant Secretary for Public and Indian Housing (''PIH''), Attention: Marketing and Leasing Management Division. The PHA must also submit one copy of the request to the Director of FHEO at the local HUD office, who shall provide copies of it to the local Director of PIH, the Secretary's Representative, and the State Coordinator or Area Coordinator. The PHA's request must include the name and telephone number of a contact person who understands how the proposed system is to work, who can answer relevant questions, and who can clarify the policies and procedures described in the request. The Assistant Secretary for FHEO and the Assistant Secretary for PIH will make the final determination on the request. HUD will endeavor to process all complete requests within 60 days of receipt by the Assistant Secretary for FHEO.

b. HUD will approve PHA requests to implement site-based waiting lists that are consistent with Title VI and that meet the other requirements of this notice, as follows:

(1) The PHA has Annual Contributions Contracts covering 1,250 or more public housing units;

(2) (a) At least 90 percent of the occupants of all of the PHA's public housing units, of the PHA's mixed-population and elderly-designated units, or of the PHA's general occupancy units, as applicable, and at least 90 percent of the applicants on the applicable public housing waiting list(s), are persons of the same race; or (b) at least 90 percent of the occupants of all of the PHA's public housing units, of the PHA's mixed-population and elderly-designated units, or of the PHA's general occupancy units, as applicable, and at least 90 percent of the applicants on the applicable public housing waiting list(s) are of the same ethnicity. (See Section 2, above, regarding the separate application of this notice to a PHA's mixed-population and elderly-designated sites and to its general occupancy sites);

(3) The PHA is not operating under a court order involving civil rights violations; has not been found to be in non-compliance with Title VI and is not currently operating under a Voluntary Compliance Agreement; and is not operating under a settlement or conciliation agreement providing for class-wide relief for race or national origin discrimination under the Fair Housing Act; and

(4) The PHA submits Multi-Family Tenant Characteristics Survey (MTCS) reports (HUD Form 50058) in a complete and timely manner.

c. In addition, all HUD approvals under this notice will be subject to the following conditions:

(1) Site-based waiting lists must be implemented for all general occupancy sites and/or all mixed-population and elderly-designated sites;

(2) All locations where a PHA accepts applications, including development/site offices or a central office, must accept applications for admission at all of the PHA's sites. If a PHA implements site-based waiting lists at its general occupancy sites, but not at its mixed-population and elderly-designated sites, then the PHA may choose not to accept general occupancy applications at its mixed-population and elderly-designated sites. If a PHA implements site-based waiting lists at its mixed-population and elderly-designated sites, but not at its general occupancy sites, then the PHA may choose not to accept mixed-population and elderly-designated applications at its general occupancy sites.

(3) The PHA must make available basic information about each site (location, occupancy, number and size of units, number and size of accessible units, availability and accessibility of amenities such as day care, security, transportation, and training programs) to all applicants at all sites;

(4) Preference policies established by PHAs must operate in accordance with law and HUD regulation. Preference policies must be applied in a non-discriminatory manner.

(5) All applicants may apply to any site(s) they choose, subject to valid, current PHA admissions policies. Applicants currently on the waiting list will maintain their original application date. However, in its request under this notice, a PHA may request HUD approval to limit, for reasons of administrative efficiency, the number of site-based waiting lists to which an applicant may apply.

(6) The PHA must provide each applicant with an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types (e.g., regular or accessible) at each of the different sites.

(7) All offers of housing must be made from a central location. Regardless of how many site-based waiting lists an applicant may be on, an applicant's refusal of an offer, without good cause, at any site, will result in the applicant's name being dropped to the bottom of all public housing waiting lists at that PHA on which the applicant's name appears.

7. HUD Monitoring

HUD will monitor the implementation of site-based waiting lists approved under this notice for continued compliance with Title VI annually.

IV. Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(c)(3) of the HUD regulations, the policies and procedures contained in this rule set out nondiscrimination standards and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions in this notice does not affect the relationship between the Federal Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this notice under Executive Order 12866, Regulatory Planning and Review. OMB determined that this notice is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Dated: December 30, 1996.

Susan M. Forward,

Deputy Assistant Secretary for Enforcement and Investigations.

Dated: December 30, 1996.

Kevin E. Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–294 Filed 1–6–97; 8:45 am]

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